

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MASSACHUSETTS

3 No. 1:15-cr-10271-WGY

4
5
6 UNITED STATES OF AMERICA

7
8 vs.

9
10 ALEX LEVIN

11
12 *****

13
14 For Jury Trial Before:
15 Judge William G. Young

16
17 United States District Court
18 District of Massachusetts (Boston.)
19 One Courthouse Way
20 Boston, Massachusetts 02210
Wednesday, May 22, 2019

21 *****

22
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1 P R O C E E D I N G S

2 (Jury enters, 9:00 a.m.)

3 THE COURT: Good morning, ladies and
4 gentlemen, thank you so very much for being here right
5 on time. I know the traffic's bad. I deeply appreciate
6 it. Because you're right here right on time, they're
7 all ready to go. And we can proceed.

8 Would you remind the witness.

9 THE CLERK: I'd like to remind you, sir, that
10 you're still under oath.

11 Do you understand?

12 THE WITNESS: I do.

13 THE COURT: And, Ms. Paruti, you may proceed.

14 MR. CARNEY: Your Honor, may we see you
15 briefly at sidebar?

16 THE COURT: You may.

17

18 AT THE SIDEBAR

19 MR. CARNEY: Your Honor, I would ask you to
20 reconsider the ruling that you made allowing the
21 government to show the, um, videos to the jury and have
22 them go to the jury room. I base my objection on the
23 well-known Supreme Court case of **Old Chief** where the
24 Court held that a district judge abused his discretion
25 when he spurned the defendant's offer to admit evidence

1 or stipulate that one of the elements of the crime was
2 met, but instead allowing evidence to go into what was
3 the prior --

4 THE COURT: I'm familiar with **Old Chief** and I
5 stand on my ruling. It is an appropriate ruling. Your
6 rights are saved.

7 MS. PARUTI: May I ask your Honor that at some
8 point, it occurred to me -- my only concern is that the
9 jury heard me in my opening and I don't want them to --

10 THE COURT: I'll take care of it.

11 MR. GAUDET: Your Honor, if I might?

12 THE COURT: Everybody wants to talk.

13 MR. GAUDET: I want to clarify something we
14 discussed yesterday.

15 I stated, in the discovery item that's been
16 entered as Exhibit 26, the registry report, that we did
17 not have a specific objection to the search warrant
18 terms in this report. I would like to clarify that we
19 do still object to this, that we received it late, it
20 was received on Thursday.

21 THE COURT: I understand it, and the record
22 should show it, but I stand on my ruling. And your
23 rights are saved.

24 You're going to cross-examine this witness?

25 MR. GAUDET: Yes.

1 THE COURT: It's a little previous.

2 MR. CARNEY: What? I'm sorry.

3 THE COURT: My comment this morning is a
4 little previous.

5 Is Mr. Levin going to testify? What do you think?
6 Is he go to testify, um, Mr. Levin?

7 MR. CARNEY: Yes, your Honor.

8 THE COURT: All right.

9

10 (In open court.)

11 THE COURT: Now go ahead, Ms. Paruti.

12 MS. PARUTI: Thank you, your Honor.

13

14 DIRECT EXAMINATION BY MS. PARUTI: (Continued.)

15 Q. Good morning.

16 A. Good morning.

17 Q. When we left off yesterday we were talking about --
18 you were just going to explain to the jury what a "link"
19 file is. So just to start us off today, would you
20 remind us what a "link" file is?

21 A. It's basically a shortcut file that Windows creates
22 that points back to the original file and you can click
23 it and it will go back to that file.

24 Q. Okay. And what's the significance of a link file
25 with respect to the name of the document -- the target

1 document, or what does it tell us about a target
2 document?

3 A. Um, it will be named the same, but it will have
4 ".lrk" at the end instead of the original target file
5 extension.

6 Q. And are link files created for every single document
7 that resides on a computer?

8 A. No, they're created for the ones that were open on
9 the computer.

10 Q. Okay.

11 MS. PARUTI: Could we show the witness and all
12 parties actually what's been marked and admitted as
13 Exhibit 24, please. And it should have been put up on
14 your screens.

15 (Jurors pull screens up.)

16 Q. Okay. Mr. Phelps, do you see what's on the screen
17 before you?

18 A. I do.

19 MS. PARUTI: And it's marked now as k for
20 identification. I'd like to have it moved into evidence
21 as Exhibit 24.

22 (Exhibit 24, marked.)

23 Q. What is it that we're looking at here?

24 A. This is a screen shot from when I was viewing the
25 recent folder on my exam machine.

1 Q. Okay, and, um, where did you locate --

2 MS. PARUTI: Can we blow up the bottom half
3 please, the bottom panel, please.

4 (Blows up.)

5 MS. PARUTI: Okay.

6 Q. Now the highlighted file there in blue, can you read
7 the title?

8 A. "1.pedowoman-ampersand herdoggie.lnk."

9 Q. ".lnk," what does that mean?

10 A. That is the file extension for link files.

11 Q. Okay.

12 MS. PARUTI: You can collapse that.

13 Q. And were you able to -- can you tell us please, by
14 the file path, where you found this link file?

15 A. This was in the Alex profile ap, data roaming
16 Microsoft Windows recent, and then the file name for
17 that link file.

18 Q. Okay.

19 MS. PARUTI: And collapse that.

20 Q. Now, are you able to tell from this view of the data
21 what kind of a file this is?

22 A. In the right panel where it says the file extension
23 of the local path of the target file, it's .avi, which
24 is a video file.

25 Q. Okay. So .avi means it's a video file?

1 A. Yes.

2 Q. Okay. And were you able to actually locate the
3 target file --

4 (Interruption by juror.)

5 THE COURT: All right, you would like a
6 recess?

7 THE JUROR: Yes.

8 THE COURT: We will take a recess. Ms. Gaudet
9 will go with you.

10 Now keep your minds suspended, do not discuss the
11 case either among yourselves nor with anyone else. And
12 the jury may recess. Thank you.

13 THE CLERK: All rise for the jury.

14 (Jurors leave.)

15 (Recess, 9:50 a.m.)

16 (Jury returns, 10:00.)

17 MS. PARUTI: I'm sorry, your Honor, may we
18 have a sidebar?

19 THE COURT: You may.

20

21 AT THE SIDEBAR

22 THE COURT: I thought you were about done with
23 him?

24 MS. PARUTI: I have just those files to go
25 through that we talked about.

1 The reason I asked for the sidebar is because
2 Ms. Johnson, who is running the technology, is pregnant
3 and left the courtroom to use the bathroom when
4 Mr. Carney left.

5 THE COURT: And she's not here?

6 MS. PARUTI: She's not here yet. Somebody
7 just ran to go get her.

8 (Ms. Johnson enters courtroom.)

9 THE COURT: Okay. Fine.

10

11 (In open court.)

12 THE COURT: We have all you people, but it
13 turned out we didn't have the one person we need, the
14 person running the machine.

15 Okay, now go ahead, Ms. Paruti.

16 MS. PARUTI: Thank you, your Honor.

17 Could we have Exhibit Number 24 on the screen.

18 (On screen.)

19 Q. Were you able to locate the target document
20 referenced in the open file?

21 A. I was not.

22 Q. Why is that?

23 A. The folder and subsequent folders and documents were
24 no longer on the image. So following downloads, so
25 starting with "bitcoin poolstaffs," backslash,

1 "kitchens," backslash, "kitchens," backslash,
2 "1.pedawoman and her doggie," was no longer on the
3 machine.

4 Q. Okay, so the folder downloads were there?

5 A. Correct.

6 Q. But none of the folders for that actual file
7 following that folder was there?

8 A. That is correct.

9 Q. Okay. Was there another link file that you saw with
10 a title that was, um, indicative of child pornography?

11 A. In the recents folder?

12 Q. Yes.

13 A. Yes.

14 MS. PARUTI: Could we have Exhibit A, please.
15 It was formerly marked as "1" for identification.

16 THE COURT: This is now in Evidence as 25?

17 MS. PARUTI: Yes.

18 THE COURT: Go ahead.

19 MS. PARUTI: Thank you.

20 Q. Now, sir, what was --

21 MS. PARUTI: If we could just blow up the
22 bottom panel.

23 (Blows up.)

24 Q. Looking on this, at the left here, it starts with
25 "PTHC"?

1 A. Um-hum.

2 Q. Could you read that file name, please?

3 A. I can. "PTHC" is bracketed and then "pretty
4 babysitter makes sex with 3yo little girl," parentheses,
5 "pt-br subtitles," tilda, "pedamom opva 2014 .lnk."

6 Q. Okay. And was that in the same location as the link
7 file you just talked to us about?

8 A. Yes, it is.

9 Q. Okay, and what folder was that?

10 A. That is the recents folder.

11 Q. Okay.

12 MS. PARUTI: And I think actually if we can
13 open up that bottom panel again.

14 Q. Did you see any other titles that, in your
15 experience, were indicative of child pornography in that
16 same folder?

17 A. I do, I see two others.

18 Q. And which ones are those?

19 A. "Incest, set pedowoman 2010.lnk." And the one that
20 starts with the "O" equals, equals, equals,
21 "8p3dowom3n," which I believe the threes were like Es.

22 Q. So "pedomen"?

23 A. Yes.

24 Q. Okay. Were you able to view those particular files?

25 A. No, I was not.

1 Q. Okay. Um -- let's move on.

2 Was there another place in the imaged drive, so a
3 copy of the computer, um, where you could see the
4 existence of the linked file other than in that folder
5 structure itself?

6 A. Yes.

7 Q. And where was that?

8 A. In the NT user dot dat register file for a path with
9 the Alex profile.

10 Q. Okay, so let's break that down. So "NT user,"
11 what's that?

12 A. It's another -- we spoke yesterday about some
13 registry files and it's another registry file that keeps
14 track of specific things per user on the machine when
15 there's a defined user account.

16 Q. Okay, so what's the defined user account we're
17 talking about here?

18 A. Alex.

19 Q. "Alex," okay. And so is that something that is
20 system-generated?

21 A. It is.

22 Q. Okay. And what type of, um, information were you
23 able to view in that registry file?

24 A. I viewed recent files that were open as well as
25 searches that were conducted on that actual machine, not

1 via the internet, but searches that he searches his hard
2 drive for.

3 Q. Okay, and were you able to generate or was the
4 computer able to generate any sort of report documenting
5 that information that you saw?

6 A. Yes, with our forensic tools it's able to generate a
7 report, and so I did so in that case.

8 MS. PARUTI: May we have Exhibit 26, please.
9 So Exhibit 26 was previously marked m for
10 identification.

11 Q. What is this, sir?

12 A. This is the registry report of the NT user dot dat.

13 Q. And does it contain that information that you just
14 told us about, the documents?

15 A. Yes, it does.

16 Q. In recent files?

17 A. Recent files and the search further down.

18 Q. Okay, let's start with the recently-opened file.

19 A. Yes.

20 Q. So, um -- and looking at this let's just explain, so
21 everybody's on the same page about what we're actually
22 looking at here.

23 If we're looking at that, what appears to be a
24 file path, um --

25 MS. PARUTI: Could you blow that up, please,

1 the top of the page.

2 Q. What does that tell us about the information that's
3 displayed in the category?

4 A. That tells us where that -- as we get into it, there
5 will be link files, and that's where those link files
6 would have been stored.

7 Q. Okay. And it says "recent docs" in it. What does
8 "recent" mean in the context of this information?

9 A. Sure. So, um, when you hit the "Start" button and
10 there was a folder that is "recent," and so that is what
11 that is referring to.

12 Q. Okay. So are those --

13 THE COURT: Well, I heard you, I didn't
14 understand it.

15 THE WITNESS: Okay.

16 THE COURT: And since I didn't, maybe the jury
17 didn't.

18 Can you explain that?

19 THE WITNESS: Sure. Within the Windows
20 operating system there is a start button, so when you
21 hit the "start" button on Windows 7, there is a folder
22 there that is called "Recents." And so all the talk
23 that we've been doing about linked files over the last
24 day and a half, um, that is where some of those link
25 files would be located, giving you quick access to that

1 file again.

2 THE COURT: And does that term mean anything
3 in terms of the operation of Windows 7?

4 THE WITNESS: (Silence.)

5 THE COURT: Well here's what I'm getting it.

6 THE WITNESS: I don't understand.

7 THE COURT: Does that suggest a time within
8 which folders were in that recents, um, the folder named
9 "Recent"? That question.

10 Do you understand mine?

11 THE WITNESS: I do.

12 THE COURT: Yeah.

13 THE WITNESS: So in that recents folder, it
14 would keep the last 10 files opened, it does not specify
15 a specific time for each of those. However, um, there
16 is a last written time to that file which would indicate
17 when the last one was open.

18 THE COURT: Let me say it back to you, see if
19 I understand it.

20 The way Windows 7 works, it maintains the last 10
21 files opened without regard to when they were opened,
22 but it gives you the time the most recent one had been
23 open.

24 Is that accurate?

25 THE WITNESS: It is.

1 THE COURT: Go ahead, Ms. Paruti.

2 Q. Okay, so you can see on this first page of this
3 report "Last Written Time" right under the file path.
4 What's the last written time that the most recently
5 opened document was opened on this particular -- in this
6 particular folder?

7 A. March 23rd, 2015.

8 Q. Okay. Now you said that, um, it logs sort of the 10
9 most recent files.

10 What do these numbers mean on the left-hand column
11 here?

12 A. When -- excuse me. When a file is opened and it's
13 entered into the registry, it's assigned a number, and
14 so -- and they're assigned chronologically. And so if a
15 file is opened again, Windows does not give it a new
16 number if it's already in the registry. So hence the
17 second one listed as Number 24, but it's the second in
18 the list. And so if you see "MRU ordered list," it
19 shows the order in which these files were recently
20 opened. So it goes 0, 24, 4, 16, and down the line.

21 Q. Okay. So what you're saying is the order in which
22 they appear --

23 MS. PARUTI: And if we flip to the next page,
24 please. And the next page.

25 Q. We can see that there's more than 10 files in this

1 particular file path?

2 A. Correct. The Windows registry, in this instance,
3 keeps track of the most 30 recently opened. However in
4 that -- in the, um, interest of space, when it displays
5 them, when you click "start" and then "recent," it will
6 display 10.

7 Q. Okay.

8 MS. PARUTI: Let's go back to Page 1.

9 Q. So these are, as we're looking at each category, the
10 top one is going to be the most recently-opened file?

11 A. Correct.

12 Q. Okay. And then the numbers, um, tell us again? I
13 just want to make sure it's clear, why are the numbers
14 not in order?

15 A. Because Windows just recognizes that that path was
16 opened previously and does not give it a new number, it
17 just keeps it in the registry and reorders it.

18 Q. Okay. So, for example, the second one down, which
19 has the Number 24 --

20 A. Right.

21 Q. -- associated with it, at one point in time that had
22 been opened previously, correct?

23 A. Correct.

24 Q. Okay. But instead of giving it a new number, it
25 just keeps the old one and moves it up the list?

1 A. Yes.

2 Q. Okay. So let's look at, um -- and looking at this
3 view, so in this, just the recent docs folder, can you
4 tell what type of files these files there listed as link
5 files actually were or are?

6 A. These do not have the file extensions there.

7 Q. Okay, and again when you're using the term
8 "extensions," what do you mean by that?

9 A. The characters following the dot at the end of the
10 file name.

11 Q. Which tell you what?

12 A. Which indicates what type of file or what program
13 would open them.

14 Q. Okay, so, for example?

15 A. ".doc," which is like a word file.

16 Q. Okay.

17 A. Or a ".avi," which is a video file.

18 Q. Okay.

19 Based on your review of the information contained
20 in the computer image and what you've already testified
21 to, do you know just looking at these -- do any of these
22 files on the first page stand out to you as far as
23 telling you sort of what type of file they might be?

24 A. Um, I -- in my review of the computer I know that
25 Alex's docs is a folder. Um, "Downloads" is a folder.

1 Um, we spoke earlier about the "pedowomen" that's at the
2 bottom of the page being a video file.

3 Q. Okay, so we're highlighting downloads and you know
4 that to be a folder on the computer. And that in fact
5 was the most recently-opened file, correct?

6 A. Right.

7 Q. And then you know Alex's docs to be a folder as
8 well?

9 A. Correct.

10 Q. And that one on the bottom, that "pedowoman" with
11 the "3," that's the link file you just described for the
12 jury?

13 A. Yes, it is.

14 Q. Okay.

15 MS. PARUTI: Let's move on, please, to Page 2.

16 Q. Now, looking at Page 2 of the most recently-opened
17 documents or files on this computer, um, did any of
18 these particular file names stand out to you?

19 A. They did.

20 Q. Okay, which ones?

21 A. So it's a continuation of the first page, it's the
22 finish of "pedowomen" at the top, with the 3s.

23 Q. Uh-huh.

24 A. "Falco pics." "Falco girl and three women."

25 "Incest set pedowoman 2010."

1 Q. Okay, and why did those stand out to you?

2 A. They all have either "pedo" or "falco" in the title,
3 which are files that I have scene associated with child
4 pornography.

5 MS. PARUTI: And in fact could we have,
6 please, Exhibit 18. And can we blow up the bottom
7 panel, please.

8 (Blows up.)

9 MS. PARUTI: We just need to go down.

10 Q. Okay. And this is from the Frostwire folder,
11 correct?

12 A. Correct.

13 Q. And do you see the word "falco" in one of the
14 titles?

15 A. I do.

16 Q. Okay, thank you.

17 Now does this report -- you told us about
18 different file types. Does this report sort the most
19 recent files opened on the computer by file type?

20 A. It does.

21 Q. Okay.

22 MS. PARUTI: And can we go to Page 3, please.

23 Q. And what is this first file type that we're looking
24 at?

25 A. ".avi".

1 Q. Okay.

2 MS. PARUTI: Blow it up.

3 Q. Okay. And in this particular -- you said that the
4 Windows registry saves, um, or registers the top left 10
5 accessed files of any file type?

6 A. Right.

7 Q. In this .avi file type, why is it that we only see
8 6?

9 A. Because the user may not have opened 10 files, they
10 may have only opened 6 avi files.

11 Q. Okay. And you told us that avi is a video, correct?

12 A. Yes.

13 Q. Could you just highlight the names of these linked
14 files here for the jury so they know what we're talking
15 about.

16 A. (Highlights.)

17 Q. And do any of these stand out to you, sir?

18 A. They do.

19 Q. Okay, which ones are those?

20 A. The ones that have "po" in the title or "PTHC."

21 Q. Okay. And to be clear, the fact that these are in
22 this registry tells us that they were opened on this
23 computer?

24 A. Correct.

25 Q. Okay. Now looking at the next file, extension

1 ".doc," what kind of files are those?

2 A. Word document files.

3 Q. Okay. And do any of these on the first page, um,
4 mean anything to you?

5 A. They do. I did observe the Levin_alex to be
6 Mr. Levin's resume.

7 Q. Okay. So that first file,
8 "Levin_alex_current_2014january15_1.length."

9 A. Yes.

10 Q. Is that a file you actually found on the computer?

11 A. I did.

12 Q. Okay, we'll come back to that one in just a minute
13 or two.

14 MS. PARUTI: Now let's go to Page 5, please.

15 Q. Do you see the .rmvb file type?

16 A. Yes, I do.

17 Q. What kind of file is that?

18 A. A video file.

19 Q. Okay. Do you happen to know what the rmvb stands
20 for?

21 A. It associates with the real media player, the video
22 player.

23 Q. Is that just another media player like Windows media
24 player?

25 A. Yes, but it would need to be downloaded, it's not

1 part of Windows.

2 Q. Okay. How many RMV or video files were opened of
3 that type?

4 A. One.

5 MS. PARUTI: And can we just highlight the
6 title, please.

7 Q. And does that stand out to you?

8 A. Yes, it does.

9 Q. In fact it's -- well why does it stand out to you?

10 A. It has both "pthc" and "pedo" in the title.

11 Q. Okay, and is that the same link file that you just
12 looked at a couple of screens ago?

13 A. Yes, it is.

14 Q. Okay. Now you said that the -- that this particular
15 registry file also tracks searches that were done on the
16 computer?

17 A. Correct.

18 MS. PARUTI: Okay, can we have Page 6, please.

19 (On screen.)

20 Q. Which of the sections here tell us where the
21 searches are?

22 A. Yes, the one entitled "word wheel query."

23 Q. Okay.

24 MS. PARUTI: And let's go to the, um --

25 Q. So what is the -- I just want to be very clear.

1 When you say it "tracks searches," searches of what?

2 A. The hard drive within the computer.

3 Q. So it's not internet or Google searches?

4 A. Correct.

5 MS. PARUTI: So let's go to Page 11, please.

6 Q. What are some of the search terms that you, um, saw
7 that were significant to you as you were reviewing this
8 content?

9 A. Um, "Pthc" stood out. "Incomplete" stood out.
10 "Tara TOR."

11 Q. Okay, so on Page 11 here we see "pthc" and then we
12 see "Incomplete." So the items that are highlighted --
13 now looking to the left, are these numbers -- does that
14 have the same significance that we've been talking about
15 with respect to the organization?

16 A. In the order that they were opened, yes.

17 Q. Okay. Why was the term "pthc" significant to you?

18 A. Because I know it to be associated with child
19 pornography files.

20 Q. Okay, and did you see that particular term in files
21 that were located on the machine?

22 A. I did.

23 Q. Okay. And what about "Incomplete," why was that
24 significant to you?

25 A. That was one of the folders that we highlighted

1 where some of those videos were located.

2 Q. Okay, so the videos that were in evidence as Exhibit
3 17?

4 A. Correct.

5 Q. Okay. You just mentioned the name "Tara"?

6 MS. PARUTI: Can we go to Page 13, please.

7 (On screen.)

8 Q. And is that at Line 21?

9 A. Yes.

10 Q. Okay, why was "Tara," why did that catch your
11 attention?

12 A. That is a known file series of child pornography.

13 Q. Okay. And then you also said, um, TOR?

14 MS. PARUTI: Can we go to Page 10, please.

15 And highlight it as Number 13.

16 Q. And why did that catch your attention?

17 A. That is the browser that we spoke of, um, which
18 anonymizes user activity online and is used to access
19 the dark web.

20 Q. Okay. Now I just want to ask you lastly a few more
21 questions about other things you found on the computer
22 that, um, you saw and maybe exported.

23 Did you see anything on the imaged drive of that
24 computer that was indicative of the user's, um, level of
25 computer knowledge or expertise?

1 A. I did.

2 Q. Okay, what types of things did you see?

3 A. We did see his resume, um, as well as items related
4 to bitcoin money.

5 Q. Uh-huh. Okay. Let's start with the resume.

6 MS. PARUTI: Could I have, just for the
7 witness, um, Exhibit 7, please.

8 (On screen.)

9 Q. Okay. Can you, um -- do you recognize what's on the
10 screen?

11 A. I do.

12 MS. PARUTI: And for the record it's marked n
13 for identification.

14 Q. So what are we looking at here?

15 A. This is a screen shot again of my screen as I viewed
16 the data in preparation.

17 Q. All right, I'm going to stop you right there. Is
18 this an exact copy of what you were looking at?

19 A. Yes.

20 MS. PARUTI: At this point, your Honor, I move
21 to admit this as Exhibit 27.

22 THE COURT: No objection?

23 MR. GAUDET: No objection.

24 THE COURT: It may be admitted, Exhibit 27.

25 MS. PARUTI: May it please be published to the

1 jury?

2 THE COURT: It may be.

3 (Exhibit 27, marked.)

4 Q. So it looks like the jury has that up on their
5 screen.

6 So what are we actually looking at here?

7 A. This is a document titled "Alex Levin bio doc."

8 MS. PARUTI: Can we just blow up the left
9 panel, please.

10 Q. Okay, so we're looking at the folder structure.
11 What folder was that document, Alex Levin bio, in?

12 A. That was in Alex's docs, which was in the documents
13 folder.

14 Q. Okay.

15 MS. PARUTI: And we'll now just look at the
16 right panel.

17 Q. So here this is a little different than the other
18 screens or screen shots that we've seen.

19 What are we actually looking at here in this right
20 panel of your viewer?

21 A. As you can see at the top of that, where it says
22 "file content," so AV lab has several viewers built into
23 it to try to make sense of what a file is and it happens
24 to be able to display Word documents, and so that is a
25 preview of that document.

1 Q. Okay. Did you find that document?

2 A. I did.

3 Q. Okay. And were you able to export that document?

4 A. Yes, I was.

5 Q. Okay.

6 MS. PARUTI: Could I have, just for the
7 witness please, what has been marked as 28, or Item 28.

8 (On screen.)

9 Q. Do you see this, sir?

10 A. Yes, I do.

11 Q. Okay, it's marked O for identification. What is
12 this?

13 A. This is the Alex Levin bio document.

14 Q. Okay, the actual document?

15 A. The actual document.

16 Q. And that was taken off his computer?

17 A. Correct.

18 Q. Is this exactly what you found on the computer?

19 A. Yes, it is.

20 MS. PARUTI: At this point I move to admit
21 this as Exhibit 28.

22 THE COURT: No objection?

23 MR. GAUDET: No objection.

24 THE COURT: Exhibit 28, in evidence.

25 MS. PARUTI: Thank you. May it be published,

1 please?

2 THE COURT: It may be.

3 (Exhibit 28, marked.)

4 Q. Now we won't go through all of it, just a couple of
5 general questions about this bio and some upcoming
6 exhibits.

7 MS. PARUTI: Could we have, just for the
8 witness, please, 29.

9 (On screen.)

10 MS. PARUTI: Okay.

11 Q. Sir, did you see the other iterations of what you
12 called the resume?

13 A. Yes, I did.

14 Q. Okay. Do you see P for identification on the screen
15 in front of you?

16 A. Yes, I do.

17 Q. Do you recognize it?

18 A. I do.

19 Q. What is it?

20 A. This is one of those resume documents.

21 Q. The actual thing that you're looking at though is?

22 A. This is my screen shot. I'm sorry.

23 Q. And does this depict exactly what you saw as you
24 were looking through the data?

25 A. Yes, it does.

1 MS. PARUTI: At this point I'd ask to admit
2 this as Exhibit 29.

3 THE COURT: No objection?

4 MR. GAUDET: I object. May we approach?

5 THE COURT: You may.

6

7 AT THE SIDEBAR

8 THE COURT: What is this?

9 MR. GAUDET: Your Honor, this is essentially
10 -- I'll let Ms. Paruti explain it.

11 THE COURT: How is it explained?

12 MS. PARUTI: It's just these resumes and then
13 there are two other, um, screens. I didn't bring my
14 list up, but I can tell you.

15 (List is handed to her.)

16 THE COURT: What does it -- we've got resumes
17 already, don't we?

18 MS. PARUTI: Well, no, there's a picture at
19 his house, but from his computer there are none that
20 have been admitted as exhibits. So I think it's highly
21 relevant to his -- the use of the computer and to his
22 expertise.

23 THE COURT: Because he says he's --

24 MS. PARUTI: I'm sorry?

25 THE COURT: He's says he's swell with

1 computers on his resume and this is an admission.

2 MS. PARUTI: Yes.

3 THE COURT: So that's why it's relevant.

4 So what's the matter?

5 MR. GAUDET: It's cumulative, the evidence has
6 just been admitted, a biography describing his computer
7 expertise was just put into evidence, and this is really
8 just -- it's a professional resume that summarizes the
9 evidence that's already admitted.

10 THE COURT: I think there's something to that,
11 we seem to be going round and round.

12 MS. PARUTI: Well I think that the content may
13 -- if we're talking about the content, okay, however the
14 fact that we're talking about -- his whole defense is --
15 I presume, because I have no idea, but is that he never
16 accessed anything on his computer, so a document that he
17 accessed I think is relevant.

18 THE COURT: Well of course. But I will
19 sustain the objection on the ground that it's
20 duplicative. If he -- if he gets on the stand and you
21 cross him, it's without prejudice if there's a necessity
22 to bring in something specific here. But you've got his
23 bio.

24 MS. PARUTI: But the bio is just a Word
25 document, there are no resumes that outline -- I don't

1 need to put every single resume in, but I think the most
2 recent resume where it lists his job areas --

3 THE COURT: You're telling me we have no
4 resumes?

5 MS. PARUTI: Not on the computer, just his bio
6 and other documents.

7 THE COURT: Okay. And how is the bio
8 different?

9 MS. PARUTI: Because it doesn't talk about his
10 specific jobs, he talks about networking and security.

11 THE COURT: Suppose I give her one resume.
12 Since the objection is duplicative, we'll whittle it
13 down to one resume, the most recent.

14 MR. GAUDET: It should be the most recent one.

15 THE COURT: Yes, it should be the most recent
16 one. And that's it for the resumes.

17 MS. PARUTI: Sure.

18 MR. GAUDET: Note my objection.

19 THE COURT: Noted.

20

21 (In open court.)

22 THE COURT: So we'll admit one of these
23 resumes, what purports to be the most recent, and you
24 should call that out to Ms. Gaudet so we're clear what
25 it is.

1 Now go ahead, Ms. Paruti.

2 MS. PARUTI: Your Honor, may I admit "P,"
3 which is the screen shot showing where the resume was
4 located?

5 THE COURT: You may, and that is Exhibit 29.

6 MS. PARUTI: Thank you.

7 THE COURT: The screen shot that was marked
8 "P" for identification is admitted in evidence, Exhibit
9 29.

10 (Exhibit 29, marked.)

11 MS. PARUTI: Could I have it displayed to the
12 jury, please.

13 Q. Okay, sir, you see on the highlighted file on the
14 bottom panel?

15 A. Yes, I do.

16 MS. PARUTI: Would you blow that up, please,
17 for the jury.

18 (Blows up.)

19 MS. PARUTI: Okay.

20 Q. Is that one of the resumes that you saw in the
21 information that is in the --

22 A. Yes, it is.

23 Q. And did you actually export this resume?

24 A. I did.

25 MS. PARUTI: Could I have 32, please.

1 (On screen.)

2 THE COURT: Okay, so you have no objection to
3 that one, Mr. Gaudet, correct?

4 MR. GAUDET: I do object but --

5 THE COURT: You do object, and we discussed it
6 at sidebar, and your rights are saved. But I let her
7 have one and it will be --

8 And the number again?

9 MS. PARUTI: So it's "S" for identification.

10 THE COURT: In evidence as?

11 MS. PARUTI: It's not in evidence yet, the
12 next open exhibit is 30, but we can use 32.

13 THE COURT: You want to jump to 32?

14 MS. PARUTI: I'll leave it to the Clerk's
15 discretion.

16 THE COURT: We do. So it's in evidence as
17 Exhibit 32, in evidence.

18 MS. PARUTI: Thank you.

19 (Exhibit 32, marked.)

20 Q. Okay. And what are we looking at here, sir?

21 A. This is that resume that was depicted from the
22 screen shot.

23 Q. Okay. Now, did you also find, um, several other
24 resumes with other titles indicative of the years
25 perhaps that they were current?

1 A. Yes, I did.

2 Q. Okay. And what if anything made you actually --
3 what did you see, why were they significant to you?

4 A. It showed that the, um -- that Mr. Levin indicates
5 he's an IT professional and has years in the field of
6 IT.

7 Q. Okay. Was there anything else specific to the
8 content of the resumes that drew your attention to --
9 perhaps actually let's look at -- we're looking at 32
10 right now.

11 MS. PARUTI: Can we blow up under his
12 accomplishments.

13 (Blows up.)

14 A. That's the -- it's at the bottom of that, um, where
15 it says "secured corporate assets from active cyber
16 attacks."

17 Q. Okay. Were there any other documents that you saw
18 that were, um -- that you saw that evidenced the user's
19 level of expertise or knowledge of computers or that
20 type of thing?

21 A. There were the bitcoin money-type of documents.

22 Q. Okay. So bitcoin is something that I think you
23 referenced earlier very very generally. So what is
24 bitcoin?

25 A. A virtual currency that people can use to buy actual

1 items, but there's no hard currency backing it in a
2 specific bank or country.

3 Q. Okay. Now what types of things did you see
4 regarding the bitcoin?

5 A. There is a PDF document, um, that was a bitcoin
6 mining guide.

7 MS. PARUTI: Can we show the witness, please,
8 34.

9 (On screen.)

10 Q. Okay, let's look at -- do you see what's on the
11 screen, sir?

12 A. Yes.

13 Q. Is this just another screen shot of what you saw?

14 A. Yes, it is.

15 Q. Is this an exact duplicate of what you saw?

16 A. Yes, it is.

17 MS. PARUTI: Your Honor, I'd offer this as
18 Exhibit 34, please.

19 THE COURT: No objection?

20 MR. GAUDET: No objection.

21 THE COURT: It may be received as Exhibit 34.

22 MS. PARUTI: May it be published, your Honor?

23 THE COURT: It may be.

24 (Exhibit 34, marked.)

25 Q. Okay. Can you see the folder structure here, it

1 says -- do you see the highlighted document?

2 A. Yes, I do.

3 Q. What's the document called?

4 A. "Bitcoin Guide Dot PDF."

5 Q. Okay. And what folder is that in?

6 A. Within the -- it's within the btc robot folder, but
7 it's within "Documents."

8 MS. PARUTI: Okay, please collapse that, and
9 if we can go down to the file path, please.

10 Q. So it's within the Alex documents documents folder?

11 A. Correct.

12 Q. Okay. "Btc," do you know that to be an abbreviation
13 for "bitcoin"?

14 A. Yes.

15 Q. Now, did you actually, um -- you didn't actually
16 export this document, did you?

17 A. I did not.

18 Q. Okay. Did you see, um, any other, um, indications
19 of sophistication in that particular realm on the imaged
20 hard drive?

21 A. In regard to bitcoin mining, there was an Attorney
22 General's Office complaint against a company called
23 Quinterra.

24 Q. Quinterra? Okay. Did you see Quinterra anywhere
25 else in your review of the computer?

1 A. There was a link file.

2 Q. There was a link file?

3 A. To that same document.

4 Q. Okay.

5 MS. PARUTI: Can we see, just for the witness,
6 BC on the screen.

7 Q. Okay. Is this another screen shot?

8 A. Yes, it is.

9 Q. Okay. Is this an exact copy of what you were
10 looking at?

11 A. Yes, it is.

12 MS. PARUTI: I'd offer this as Exhibit 36,
13 please.

14 THE COURT: Any objection?

15 MR. GAUDET: No objection.

16 THE COURT: It may be received, Exhibit 36.

17 MS. PARUTI: May it be published please?

18 THE COURT: It may.

19 MS. PARUTI: Thank you.

20 (Exhibit 36, marked.)

21 Q. So what are we looking at in this view, sir?

22 A. This is a screen shot of what I actually was looking
23 at on my computer.

24 Q. Okay.

25 MS. PARUTI: So can we have the file path,

1 please.

2 Q. So what folder is this in?

3 A. That's in the Alex downloads folder.

4 Q. Okay. Were you actually able to locate this file?

5 A. Um, yes, I was.

6 Q. Okay, and did you export this file?

7 A. Yes, I did.

8 MS. PARUTI: May I have just 37 for the
9 witness, please.

10 (On witness screen.)

11 Q. And what is this, sir?

12 A. And this is that document, that PDF document of the
13 Attorney General's Office complaint.

14 MS. PARUTI: It's currently marked X for
15 identification. I move at this point to admit it as
16 Exhibit 37.

17 THE COURT: Any objection?

18 MR. GAUDET: No objection.

19 THE COURT: It may be received as Exhibit 37.

20 MS. PARUTI: And could I publish it to the
21 jury?

22 THE COURT: You may.

23 MS. PARUTI: Thank you.

24 (Exhibit 37, marked.)

25 Q. And, Agent Phelps, why is this significant to you?

1 A. Um, it tells me that the user was at least getting
2 started in attempting to use bitcoin mining.

3 Q. Okay. When you're using this term "mining," can you
4 basically tell us what that means?

5 A. Um, very basically. It is using the computer and
6 there's a couple of programs that you can use that can
7 go out and search a network that attempts to obtain
8 bitcoin.

9 Q. Okay, and that's the mining?

10 A. Correct.

11 Q. All right.

12 A. And this refers to a server that Mr. Levin attempted
13 to buy and Quinterro had advertised that they had
14 servers. It takes a lot of processing power and memory
15 to do bitcoin money and so this server would have
16 allowed him to set it up and just let it run to mine for
17 bitcoin.

18 Q. So you're saying that this complaint is about his
19 attempted purchase on that server?

20 A. Correct.

21 Q. All right. And the very last thing I think you
22 mentioned as one of these things that you noticed was
23 where there was evidence of TOR, um, you described that
24 a couple of times.

25 MS. PARUTI: Could we have this just for the

1 witness, 38, please.

2 (On screen.)

3 MS. PARUTI: And this is marked Y for
4 identification.

5 Q. What is this?

6 A. This is a screen shot depicting the TOR browser
7 location.

8 Q. Is it an exact depiction of what you saw when
9 looking at this location?

10 A. Yes, it is.

11 MS. PARUTI: At this point, your Honor, I'd
12 like to enter Y into evidence as Exhibit 38, please.

13 THE COURT: No objection?

14 MR. GAUDET: I object.

15 THE COURT: You do object?

16 MR. GAUDET: Yes, your Honor. May we
17 approach?

18 THE COURT: You may.

19

20 AT THE SIDEBAR

21 THE COURT: Well I thought she was going
22 pretty far afield with bitcoin, but you have no
23 objection to that.

24 TOR seems to be relevant?

25 MR. GAUDET: I don't see any relevance as to

1 this. I don't see how the government can establish that
2 because a person has a TOR internet browser, that that
3 somehow confers some sort of specialized computer and
4 expertise.

5 THE COURT: Why is it relevant?

6 MS. PARUTI: I think it obviously does. I
7 think a lay person has to explain that it's something
8 that anonymizes your activity on the internet, and that
9 certainly indicates a level of sophistication above an
10 average user.

11 THE COURT: I think so. I will so rule.

12 MR. GAUDET: Your Honor, explaining how it
13 works would certainly be above a lay individual, but
14 using it is not. There's no foundation that this is
15 something that requires technical knowledge to use or to
16 download or to understand what "deanonymizing" means. I
17 agree that that would require a level of sophistication,
18 but there's no indication that that's what's going on.

19 THE COURT: I think he's probably capable of
20 telling us that TOR anonymizes the user and that's
21 sufficient foundation for me. But I'll sustain it until
22 you lay the foundation.

23 MS. PARUTI: I think he has already said that,
24 your Honor.

25 THE COURT: Well why don't you get him to say

1 it again.

2 MS. PARUTI: Okay, yes. Thank you, your
3 Honor.

4

5 (In open court.)

6 Q. Agent Phelps, can you tell us one more time -- and I
7 know you said it a couple of times, but one more time
8 what "TOR" is?

9 A. "TOR" is a browser that could be used to anonymize a
10 user's activity online as well as access to the dark
11 web.

12 Q. Thank you.

13 MS. PARUTI: At this point, your Honor, I move
14 Y for identification into evidence as Exhibit 38.

15 THE COURT: It may be admitted over defense's
16 objection and your rights are saved. It's admitted,
17 Exhibit 38.

18 MS. PARUTI: Could we publish that, please.

19 (Exhibit 38, marked.)

20 Q. Okay.

21 MS. PARUTI: Can we just look at the left
22 panel, please.

23 Q. And you see the TOR browser, um, right sort of in
24 the middle of that structure?

25 A. I do.

1 Q. Okay. Thank you.

2 MS. PARUTI: Can we just blow up the file,
3 please.

4 (Blows up.)

5 Q. And where was that located?

6 A. That is in the user's Alex desktop TOR browser
7 folder.

8 Q. Okay. And then --

9 MS. PARUTI: And can you blow up the upper
10 panel, please.

11 Q. So the TOR browser itself is still located on the
12 computer on Box 20 of 2015?

13 A. Yes, it was.

14 MS. PARUTI: Thank you. I have no further
15 questions, your Honor.

16 THE COURT: Mr. Gaudet, do you wish to examine
17 this witness?

18 MR. GAUDET: I do.

19 THE COURT: You may.

20

21 CROSS-EXAMINATION BY MR. GAUDET:

22 Q. Good morning, Agent Phelps.

23 A. Good morning.

24 Q. I'd like to begin by talking about the peer-to-peer
25 file-sharing programs you discussed.

1 A. Okay.

2 Q. So you said the laptop had a program called

3 "Frostwire" installed on it, correct?

4 A. At one point that program was installed.

5 Q. And there's also a program called Shiraza at one
6 point?

7 A. At one point, yes.

8 Q. And Frostwire and Shiraza are what are called "peer-
9 to-peer file-sharing programs," correct?

10 A. That is correct.

11 Q. And peer-to-peer programs allow users to share and
12 download files from each other, correct?

13 A. Yes.

14 Q. And they do that over the internet?

15 A. Yes, they do.

16 Q. And users can share different types of files, right?

17 A. That is correct.

18 Q. Audio files, for example?

19 A. Yes.

20 Q. Such as cell phones?

21 A. Sure.

22 Q. Video files like movies or TV shows?

23 A. Yes.

24 Q. Text files?

25 A. Sure.

1 Q. Such as books?

2 A. Yes. Yes.

3 Q. And you can share computer software?

4 A. Yes.

5 Q. Right?

6 A. Yes.

7 Q. Now peer-to-peer users are able to make files on
8 their computers available for other users, right?

9 A. That is correct.

10 Q. And those other users can download files from them,
11 right?

12 A. Yes.

13 Q. And a user can make thousands of files available for
14 downloading?

15 A. Yes, they could.

16 Q. And these peer-to-peer programs, they have a search
17 function?

18 A. Yes, they do.

19 Q. Users can search for other types of files they want
20 to download?

21 A. Yes, either by type or actual title.

22 Q. I think the example used yesterday was if you were
23 looking for "Titanic," right?

24 A. Right.

25 Q. That you could just type in Titanic and then you

1 would get search results for it?

2 A. Um, I might not have gotten into specifics.

3 Q. Well, you could do that, right?

4 A. Yes, you could.

5 Q. And then the program would return results with file
6 names that matched the search term?

7 A. That is correct.

8 Q. Okay. Now -- and then the user could select the
9 files that they wanted, right?

10 A. Yes.

11 Q. Like download?

12 A. Yes.

13 Q. And eventually the contents of the file could be
14 downloaded into a computer?

15 A. That is correct.

16 Q. Now it's possible to sort by user on these programs
17 as well, right?

18 A. Um, I'm not sure I'm following you.

19 Q. Can you search -- well let me phrase it like this.
20 People who register or download peer-to-peer programs
21 can insert a user name, right?

22 A. Yes.

23 Q. And another user could search for that specific user
24 name?

25 A. Correct.

1 Q. To see what files they have available to share?

2 A. Yes.

3 Q. And then once a user finds that specific user name,
4 they can download whatever files and make them
5 available?

6 A. Yes.

7 Q. And so it's possible to download another user's
8 entire shared drive?

9 A. Yes.

10 Q. And after downloading that shared drive, the files
11 are saved to the other user's computer?

12 A. Yes.

13 Q. And Frostwire and Shiraza, those were the programs
14 that were used to -- that got the videos on Mr. Levin's
15 laptop onto it, right?

16 A. That's correct.

17 MR. GAUDET: Miss Johnson, could you pull up
18 Exhibit 18 for me.

19 (On screen.)

20 Q. Agent Phelps, do you see Exhibit 18 on your screen?

21 A. Yes, I do.

22 Q. And that is the Frostwire screen shot, correct?

23 A. That is correct.

24 Q. Okay, and these are the files that you found in the
25 Frostwire folder?

1 A. Yes.

2 MR. GAUDET: Would you blow up the entirety of
3 the bottom parts and all the way to the other side.
4 Yes, thank you.

5 Q. Now, Agent Phelps, I want to direct your attention
6 to the column, the third from the right. Do you see
7 where it says "created"?

8 A. I do.

9 Q. Okay. And now under that it lists a series of
10 dates, correct?

11 A. Yes.

12 Q. One date for each file?

13 A. Correct.

14 Q. Now, the created date refers to the date that the
15 files were downloaded, correct?

16 A. Yes.

17 Q. And now if you see the created date for these five
18 files, they're all October 11th, 2011, correct?

19 A. Correct.

20 Q. Between 4:17 p.m. and 7:24 p.m.?

21 A. Yes.

22 Q. Now, if you go to the right of that it's titled
23 "Accessed," right?

24 A. That's correct.

25 Q. And there are a series of dates below it?

1 A. Yes.

2 Q. Now "last accessed," that's a feature that some
3 versions of Windows have installed on it, right?

4 A. Yes.

5 Q. Um, and it's a feature that can be enabled or
6 disabled?

7 A. Correct.

8 Q. And this laptop had it enabled?

9 A. Yes.

10 Q. And when the feature is enabled, a time stamp is
11 created for the last time a file is accessed?

12 A. Yes.

13 Q. All right. And this laptop had it enabled so that
14 it was a precise time stamp?

15 A. Correct.

16 Q. Now, any time a file is accessed, that last access
17 date will change?

18 A. Yes.

19 Q. Um, they'll update the time stamp to the most recent
20 time the file was accessed?

21 A. Correct.

22 Q. All right. Now, Agent Phelps, you'll agree with me
23 that the last access date for these five files was fall,
24 January 31st, 2015 at 2:28 p.m.?

25 A. Yes.

1 Q. And 38 seconds?

2 A. Yes.

3 Q. All at the exact same time?

4 A. Yes.

5 MR. GAUDET: Now, Miss Johnson, 22, please.

6 (On screen.)

7 Q. Now, Agent Phelps, do you see Exhibit 22 on your
8 screen?

9 A. I do.

10 Q. Now this is the Incomplete folder, right?

11 A. Correct.

12 Q. And you found six files in this folder that you said
13 depicted child pornography?

14 A. Yes.

15 MR. GAUDET: Now please go to the bottom
16 portion.

17 Q. I want to direct your attention, Agent Phelps, to
18 the created column again.

19 A. Uh-huh.

20 Q. Do you see that the created date for these files was
21 all October 11th, 2011?

22 A. Yes.

23 Q. And that's the same date that the five files in the
24 Frostwire folder were also created, right?

25 A. Yes.

1 Q. And you'll see that they were downloaded between
2 4:20 p.m. and 9:07 p.m.?

3 A. Correct.

4 Q. Using Frostwire?

5 A. Correct.

6 Q. And if I could direct you to the next column where
7 it says "accessed," you see that they all have a last
8 accessed date of January 31st, 2015 at 2:28 p.m.?

9 A. I do.

10 Q. The same as the five files you found in the
11 Frostwire folder?

12 A. Correct.

13 MR. GAUDET: Now Ms. Johnson.

14 (Pause.)

15 Q. Agent Phelps, this is the Shiraza folder, correct?

16 A. Yes.

17 Q. And you found two video files in the Shiraza folder
18 that you said were child pornography?

19 A. Yes.

20 Q. And those with the ones with the check marks on the
21 left side, correct?

22 A. Correct.

23 Q. And again I direct your attention to the created
24 date. Do you see what I'm referring to?

25 A. I do.

1 Q. The created date for both of these video files was
2 September 24th, 2011, correct?

3 A. Yes.

4 Q. One was downloaded at 9:14 and 0 seconds a.m.?

5 A. P.m.

6 Q. P.m., excuse me.

7 A. Yes.

8 Q. But otherwise the time was correct?

9 A. Yes.

10 Q. And the second was downloaded at 9:14 and 2
11 seconds p.m.?

12 A. Yes.

13 Q. Okay, so within 2 seconds of each other?

14 A. Sure.

15 Q. And if I could direct your attention to the next
16 column, they're access dates. They were both January
17 31st, 2015 at 2:29:27 p.m., correct?

18 A. 2:19.

19 Q. 2:19, that's a typo of mine. At 2:19:27 p.m. on
20 January 31st, 2015?

21 A. Yes.

22 Q. The exact same date as the other files that we just
23 discussed, January 31st, 2015?

24 A. Yes.

25 Q. Okay, so all 13 of the child pornography files that

1 we've been discussing in this trial were last accessed
2 on the exact same day?

3 A. Yes.

4 Q. Now these weren't manual user accesses, were they?

5 A. Correct.

6 Q. They're not the result of the computer's user
7 clicking on and opening the files?

8 A. For the access, correct.

9 Q. Okay. You have no indication that these files,
10 their contents, were displayed on the screen on that
11 date?

12 A. Correct.

13 Q. And you have no indication that any of these 13
14 files were accessed after January 31st, 2015?

15 A. Correct.

16 Q. You don't know when they were accessed or if they
17 were accessed prior to January 31st, 2015?

18 A. Correct.

19 Q. And if they were accessed, you don't know for how
20 long?

21 A. That is correct.

22 Q. Now you examined -- no, strike that.

23 You're aware that the laptop was seized or taken
24 from Mr. Levin's home in August of 2015, correct?

25 A. Correct.

1 Q. And you were actually there that day, right?

2 A. I was.

3 Q. So that was nearly 7 months after the last access
4 date that was listed on these files?

5 A. Yes.

6 Q. The last access date on which the user did not
7 access the files, correct?

8 MS. PARUTI: Objection.

9 THE COURT: No, he may have the question, if
10 the witness understands it.

11 A. Could you repeat it, please.

12 Q. So that was 7 months after the last access date in
13 which there was not a user access for those particular
14 files, correct?

15 A. Correct.

16 MR. GAUDET: Miss Johnson, would you mind
17 pulling up Exhibit 20.

18 (On screen.)

19 Q. I just want to refer back to the Shiraza files,
20 Agent Phelps. Do you see them on your screen?

21 A. I do.

22 Q. And both of these you said yesterday are partial
23 files, right?

24 A. Correct.

25 Q. Partial is the extension?

1 A. Yes.

2 Q. Okay. Neither of these files have descriptive file
3 names, do they?

4 A. No, they do not.

5 Q. They're just a string of letters and numbers?

6 A. Correct.

7 Q. And you can see that there are other files within
8 this folder?

9 A. Yes.

10 Q. Okay. And it appears that -- you would agree with
11 me that all of these files have nondescriptive file
12 names?

13 A. That is correct.

14 Q. And so you were able to determine, excuse me, that
15 these two files were depicted?

16 A. Yes, I was.

17 Q. Now the titles of these, you'd agree, do not
18 describe the contents of the files?

19 A. Correct.

20 Q. And so just by looking at the title, you don't know
21 what the file contained?

22 A. That is correct.

23 Q. Now, we just discussed the creation date for these
24 files and it was September 24th, 2011, right?

25 A. Yes.

1 Q. And you see that there were other files that were
2 also created on that day?

3 A. Yes, I do.

4 Q. Also with nondescriptive title names?

5 A. Yes.

6 Q. And those did not depict child pornography?

7 A. I was unable to play them.

8 Q. But you don't know that they did?

9 A. I do not.

10 Q. All right.

11 I want to ask you some questions about link files,
12 Agent Phelps.

13 A. Okay.

14 Q. You just discussed those on direct examination,
15 right?

16 A. Yes.

17 Q. And again link files are created when the file is
18 accessed, right?

19 A. When the file is actually opened, yes.

20 Q. And that could be done by a computer's user, right?

21 A. Yes, it can.

22 Q. And it's also possible for a program on a computer
23 to open a file?

24 A. Depending on what it is, and it's not a user file
25 typically, it opens other system files.

1 Q. Now link files are shortcuts?

2 A. They are.

3 Q. That's a good way to describe it, correct?

4 A. Yes.

5 Q. And it points to another file having been accessed,
6 correct?

7 A. Yes.

8 Q. Now, if the original file is deleted from the
9 computer, the link file remains?

10 A. That is correct.

11 Q. And the link files don't contain the contents of the
12 original file?

13 A. Correct.

14 Q. The name -- now you'd agree with me that the name of
15 a file alone does not tell you what its contents are?

16 A. It does not.

17 Q. And that goes for any types of files, right?

18 A. Correct.

19 Q. Now the files that you found in the Frostwire
20 folder, you didn't find any link files for those, did
21 you?

22 A. I -- can we pull up that screen? I don't recall off
23 the top of my head.

24 Q. Sure, we can pull it up.

25 MR. GAUDET: Could we pull up Exhibit 93.

1 (On screen.)

2 Q. Did you find any link files for these, Agent Phelps?

3 A. No, I did not.

4 Q. Did you find any link files for the files that were
5 in the Incomplete folder?

6 A. No, I did not.

7 Q. Did you find any link files for the files that were
8 in the Shiraza folder?

9 A. No, I did not.

10 Q. Now the link files that you did find -- and again
11 the files were no longer on the computer, right?

12 A. Correct.

13 Q. They'd been deleted at some point?

14 A. Correct.

15 Q. Okay. Now you said that they would have had to be
16 opened to create a link file?

17 A. That is correct.

18 Q. You don't know how long they would have been open
19 for?

20 A. It does -- no, it does not.

21 Q. It could have been a second, correct?

22 A. Correct.

23 Q. That it could have been closed and deleted?

24 A. Correct.

25 Q. Now -- and you don't know what their actual contents

1 were?

2 A. That is correct.

3 Q. You only saw the title names?

4 A. Yes.

5 Q. Now, you also just testified about TOR, right?

6 A. Yes.

7 Q. Um, now TOR was a browser that was installed on
8 Mr. Levin's laptop?

9 A. Yes.

10 Q. And it's an internet browser, right?

11 A. Yes, it is.

12 Q. Like Internet Explorer or Firefox?

13 A. Yes, it actually uses Firefox.

14 Q. Oh, it does use Firefox?

15 A. Yes.

16 Q. Okay. And you said it allows users to surf the
17 internet anonymously?

18 A. Correct.

19 Q. Anyone can download TOR?

20 A. That is correct.

21 Q. You can go to TOR's website and install it on your
22 computer?

23 A. Yes.

24 Q. It's free, isn't it?

25 A. It is.

1 Q. All you have to do to get to it is type "TOR" into
2 Google and it takes you to the website?

3 A. Correct.

4 Q. Um, now once it's installed on the user's computer,
5 they can search the internet on it?

6 A. That is correct.

7 Q. Just like they would on Internet Explorer?

8 A. Yes.

9 Q. It doesn't require any technical computer knowledge
10 to use TOR, does it?

11 A. It does not.

12 Q. And you referred to it as the use of the "dark web"?

13 A. Yes.

14 Q. That's the nickname people have given to it,
15 correct?

16 A. Yes.

17 MS. PARUTI: Objection.

18 THE COURT: Well in view of the answer, I'm
19 going to let that stand.

20 Q. It's perfectly legal to have TOR installed on your
21 computer?

22 A. Yes, it is.

23 Q. You're aware that it was invented by the United
24 States government?

25 A. Yes, I am.

1 Q. So I want to talk to you a little bit more about the
2 examination of the computer that you did.

3 The laptop had password protection enabled on it,
4 correct?

5 A. Yes, it did.

6 Q. And this is just standard password protection that
7 comes preinstalled on Windows?

8 A. Correct.

9 Q. It wasn't password protection that the computer's
10 user had to install?

11 A. That is correct.

12 Q. Or modify in any way?

13 A. Nope.

14 Q. Agent Phelps, are you familiar with the term
15 "encryption"?

16 A. Yes, I am.

17 Q. Do you know what it means to "encrypt" a digital
18 file?

19 A. Yes, I do.

20 Q. Could you just tell the jury what it means to
21 encrypt something?

22 A. It means to, um, apply encryption or to make it
23 unviewable just by clicking on it. You would need to
24 supply a password to be able to access it.

25 Q. And it's possible to encrypt video files?

1 A. Yes, it is.

2 Q. It's possible to encrypt an entire hard drive?

3 A. Yes, it is.

4 Q. Now, an encryption takes readable data and basically
5 makes it unreadable, right?

6 A. Correct.

7 Q. The only way to access an encrypted file is if you
8 have an encryption key?

9 A. That is correct.

10 Q. And that's system to a password?

11 A. Yes.

12 Q. And without that you can't view encrypted files?

13 A. Correct.

14 Q. You'd agree with me that encryption is more secure
15 than simply password-protecting something?

16 A. Yes.

17 Q. Encryption is more sophisticated than password
18 protection?

19 A. Yes.

20 Q. It would take much longer to break an encryption
21 than a password?

22 A. Yes, it would.

23 Q. Somebody with some computer knowledge or experience
24 might know how to encrypt something?

25 A. Yes.

1 Q. Mr. Levin's laptop wasn't encrypted, was it?

2 A. No, it was not.

3 Q. The child pornography files you discovered were not
4 encrypted?

5 A. No, they were not.

6 Q. The folders they were in were not encrypted?

7 A. No, they were not.

8 Q. It's possible to password-protect files too, isn't
9 it?

10 A. Yes, it is.

11 Q. And it's possible to password-protect folders?

12 A. Yes, it is.

13 Q. The 13 files we've been referring to were not
14 password protected?

15 A. No, they were not.

16 Q. The folders they were in were not password
17 protected?

18 A. No.

19 Q. Now you've been a forensic examiner since 2015?

20 A. That's correct.

21 Q. And you've examined a lot of digital devices in that
22 period, right?

23 A. Yes, I have.

24 Q. And you do a very thorough job every time you do so?

25 A. I try to.

1 Q. Just like in this case?

2 A. That is correct.

3 Q. Now, this laptop was not the only device that was
4 seized from Mr. Levin's home, right?

5 A. That's correct.

6 Q. It's not the only one that was examined?

7 A. That's correct.

8 Q. And there was a thorough examination of each of the
9 devices?

10 A. That is correct.

11 Q. For example, there was a second laptop, right?

12 A. Yes.

13 Q. We'll call that -- is it fair to say that it was a
14 newer laptop?

15 A. Yes.

16 Q. And the same forensic examination that was performed
17 on the old laptop was performed on the new one?

18 A. Yes.

19 Q. Just as thorough, right?

20 A. Correct.

21 Q. And no child pornography on the second laptop, was
22 there?

23 A. There was not.

24 Q. And you examined or your office examined a Verizon
25 tablet?

1 A. Yes.

2 Q. And that's a device that's capable of connecting to
3 the internet?

4 A. Yes, it is.

5 Q. It can store videos, right?

6 A. Yes.

7 Q. And photographs?

8 A. Correct.

9 Q. And you didn't find any child porn on the tablet?

10 A. I did not.

11 Q. And you examined a Toshiba tablet?

12 A. Yes.

13 Q. And again it's something that's capable of storing
14 digital files?

15 A. Correct.

16 Q. And there's no child pornography files on it?

17 A. No.

18 Q. And you examined the two external hard drives?

19 A. Yes.

20 Q. Now an external hard drive is a portable digital
21 storage device, is that fair to say?

22 A. Yes, it is.

23 Q. And it can be used to store videos and photographs?

24 A. Yes.

25 Q. It can be connected to a laptop?

1 A. Sure.

2 Q. And it can be connected to a laptop using say WIFI,
3 depending on the model?

4 A. Depending on the model, sure.

5 Q. Or you could connect it with hardwire?

6 A. Via a USB cable, sure.

7 Q. And once connected the laptop can access the files
8 that are on the hard drive and vice-versa?

9 A. Yes.

10 Q. And neither of the external hard drives you examined
11 had child pornography on them?

12 A. No, they did not.

13 Q. And you examined two MP 3 players?

14 A. I recall one.

15 Q. So you examined one?

16 A. Yes.

17 Q. And the MP 3 players -- the MP 3 player, excuse me,
18 was capable of storing video files?

19 A. It could.

20 Q. It could also be connected to a laptop, right?

21 A. Yes, it could.

22 Q. And download files from the laptop?

23 A. Sure.

24 Q. The MP 3 player didn't have child pornography on it?

25 A. No, it did not.

1 Q. You examined a cell phone that was taken from
2 Mr. Levin's home?

3 A. Yes.

4 Q. And again the cell phone is capable of storing video
5 files?

6 A. Yes.

7 Q. And picture files?

8 A. Correct.

9 Q. You didn't find any child pornography on the cell
10 phone?

11 A. No.

12 Q. And you examined two thumb drives?

13 A. Yes.

14 Q. And a thumb drive, that might also be called a
15 "flash drive"?

16 A. Sure.

17 Q. Which is also a portable digital storage device?

18 A. Yes.

19 Q. And it could store videos and pictures, right?

20 A. It could.

21 Q. Now you can plug a thumb drive into a laptop in
22 order to connect it, right?

23 A. Yes, you could.

24 Q. And you can transfer files from the laptop to the
25 thumb drive and from the thumb drive to the laptop?

1 A. Sure.

2 Q. So you can view on your laptop videos that are on
3 the thumb drive?

4 A. Yes.

5 Q. And one of the thumb drives contains 32 gigabytes of
6 data, right?

7 A. Yes.

8 Q. And that's not a small amount, is it?

9 A. It's not.

10 Q. And it could hold hundreds of files, including
11 videos and pictures?

12 A. Yes, it could.

13 Q. And the other thumb drive had 4 gigabytes of data?

14 A. Yes.

15 Q. Enough to store less, but still photos and videos?

16 A. Yes.

17 Q. And the thumb drives physically fit -- about an inch
18 and a half, 2 inches long at the most?

19 A. Sure.

20 Q. Something you could easily hide somewhere?

21 A. Yes.

22 Q. And you didn't find any child pornography files on
23 those, did you?

24 A. No, I did not.

25 Q. So in total there were 11 electronic devices that

1 you examined, right?

2 A. Yes.

3 Q. And the only one that had child pornography was the
4 older laptop?

5 A. Yes.

6 Q. And you're not aware of any child pornography being
7 found anywhere else in Mr. Levin's home?

8 A. No, I do not.

9 MR. GAUDET: I have no further questions.

10 THE COURT: Any redirect?

11 MR. GAUDET: Actually, if I could, your Honor?

12 THE COURT: Of course. Yes.

13 (Pause.)

14 MR. GAUDET: Nothing further, your Honor.

15 THE COURT: Any redirect?

16 MS. PARUTI: Just briefly, thank you.

17

18 REDIRECT EXAMINATION BY MS. PARUTI:

19 Q. Now, sir, you said on cross you said that TOR is a
20 free, um, browser that you can use to access the regular
21 internet as well as the dark web, is that correct?

22 A. That is correct.

23 Q. As a forensic examiner, can you see anything about
24 the nature of a person's activity on TOR when you're
25 examining their hard drive?

1 A. No.

2 MR. GAUDET: Objection.

3 THE COURT: No, she may have the question and
4 the answer may stand.

5 MS. PARUTI: Thank you.

6 Q. Um, if we could --

7 MS. PARUTI: If we could put up Exhibit 22,
8 please.

9 Q. This is one of the exhibits that counsel referred to
10 during his cross-examination of you.

11 A. Okay.

12 MS. PARUTI: Can we just blow up the file path
13 here, please.

14 (Blows up.)

15 Q. I think the question implies that this was related
16 to Frostwire, but can you tell us what folder this
17 particular file came from?

18 A. This particular file is in the Incomplete folder.

19 Q. Okay. And was the Incomplete -- was that an
20 Incomplete folder that was related to Frostwire?

21 A. It is not.

22 Q. Can you tell where this particular folder came from?

23 A. I cannot.

24 Q. In fact can you tell whether it was downloaded off
25 the internet or introduced by a thumb drive or some

1 other sort of storage device?

2 A. I guess in direct relation to that testimony where
3 we said that the file paths were, or the names did not
4 indicate when it was an incomplete download, so if these
5 were incomplete, by that assertion these would not be
6 readable names, it would just be letters and numbers.
7 However this list of names in the Incomplete folder all
8 have "pedo" in the title or "PTHC" and these files were
9 playable and they do have the file extensions.

10 Q. Okay. So can you tell from that information where
11 exactly they came from?

12 A. No, I can't.

13 Q. Okay.

14 MS. PARUTI: If you could collapse that and if
15 you can just blow up creative access modified. Perfect.

16 Q. You were talking about created dates and actual
17 dates and modified dates. We've seen that date, January
18 31st of 2015 and the 3-22 on there.

19 Now we were talking about -- and I want to make
20 sure the testimony is clear, you're talking about, um,
21 manual access versus some other sort of access. Can you
22 just explain what you meant by that when you were
23 answering the question?

24 A. Sure. And so it does get confusing where the access
25 comes from. Because we do not have a link file to

1 specify that access on that date or time, oftentimes
2 this access can also refer to if Windows touches a file.
3 Um, by opening the folder or Windows does what's called
4 "indexing," so that when something is searched, it can
5 be easily accessed. So as we talked earlier about this
6 start bar, and then the start button, and then the
7 search bar within that field that appears, that's how
8 Windows is able to search your entire hard drive
9 quickly, by that indexing function that is often used.

10 Q. Okay. And this doesn't tell you anything about
11 these particular kinds of data. Does this tell you
12 anything about how often these particular files were
13 actually manually accessed between the created date and
14 the accessed date?

15 A. No, it does not.

16 MS. PARUTI: Yes, that one, please. If you
17 could go to the Shiraza -- Exhibit 20, please. Just
18 blow up the bottom left on that. Okay.

19 Q. So you said these files that were found, um, that
20 you viewed and you described one of them as TTR, I
21 believe. You said that they were dot partial files?

22 A. Yes.

23 Q. Did that impede your ability to see them?

24 A. It did not.

25 Q. Okay. In fact do you know how many minutes -- I

1 think you said that file was about 49 minutes long?

2 A. 49 minutes and 22 seconds.

3 Q. Okay. Were you able to see a significant portion of
4 that particular file?

5 A. Yes, I was.

6 Q. Okay. Now looking at the string of letters and
7 numbers, um, in the names of these files, does that have
8 any significance to you, Agent, in your experience for
9 why those sorts of letters might be in the title of a
10 file?

11 A. Um, I'm not sure.

12 Q. Okay. Does the term or the combination of ED 2k,
13 does that have any significance for you?

14 A. Those are often letters and Number 2 is associated
15 with edonkey, which is another file from a bit torrent
16 file-sharing program.

17 Q. Okay, and bit torrent, I think you said earlier, is
18 just a type of a file-sharing protocol?

19 A. Correct.

20 MS. PARUTTI: Okay, now --

21 Q. Now you said that, um, linked files -- you were
22 asked about, um, link files and I think counsel said,
23 um, a file could be accessed, that you can't tell from a
24 link file how long that file is accessed, correct?

25 A. Correct.

1 Q. Okay. And then for the link files that you saw,
2 some of them, for example the one entitled "pedowoman
3 and her doggie dot lnk," you don't know how long that
4 was opened on Mr. Levin's computer, correct?

5 A. Correct.

6 Q. Okay. Can you tell -- but you know that that file
7 wasn't still on the computer when you looked at it?

8 A. That is correct.

9 Q. Can you tell anything from your forensic examination
10 about how that computer -- excuse me, about what
11 happened to that file after it was removed from this
12 particular hard drive?

13 A. No.

14 Q. So, for example, link files don't tell you whether
15 or not files were in fact copied over to other media
16 like thumb drives?

17 A. Correct.

18 Q. And you described a thumb drive, and just for the
19 record tell us what is a "thumb drive," when we're using
20 that colloquial term?

21 A. It's an external storage device.

22 Q. And what is the size of thumb drives these days?

23 A. It is very small, they've gotten even smaller. I
24 think Mr. Gaudet referred to an inch and a half or 2
25 inches, but some are even smaller than that.

1 Q. Okay. So even back in say 2015, so, for example, in
2 August of 2015 or March of 2015, thumb drives were in
3 existence then, correct?

4 A. Yes, they were.

5 Q. And in fact you actually received how many thumb
6 drives from Mr. Levin's house, approximately?

7 A. I believe there were two.

8 Q. Okay, so there were only two thumb drives that were
9 found in Mr. Levin's house, correct?

10 A. Correct.

11 Q. And to be very clear, did the FBI or any other law
12 enforcement agency search any piece of media that was
13 not found at Mr. Levin's house?

14 A. No.

15 MS. PARUTI: Thank you.

16 THE COURT: Nothing further?

17 MR. GAUDET: Briefly, your Honor.

18 THE COURT: You may.

19

20 RECROSS-EXAMINATION BY MR. GAUDET:

21 Q. Agent Phelps, we were just discussing indexing. And
22 so it's clear that the access dates of January 31st,
23 2015 were the result of computer indexing the files,
24 correct?

25 A. I'm not saying that that was specifically what

1 happened, I was just describing something that could
2 potentially cause an access date -- a function by
3 Windows.

4 Q. And if a computer indexes files, it goes through all
5 of them, right?

6 A. Correct.

7 Q. Sequentially?

8 A. Correct.

9 Q. At sort of the same time? So that the access dates
10 would all be close in time?

11 A. Close in time, correct.

12 Q. Okay. And the January 31st, 2015 access, the last
13 access date, do you have any indication that those files
14 were accessed prior to that, correct?

15 A. I don't have something indicating it.

16 Q. No. So the date between the access creation date
17 and the access date, you don't have any indication there
18 was access before those dates?

19 A. I do not know that.

20 Q. And briefly, for peer-to-peer programs, it's
21 possible to download an entire drive at once, isn't it?

22 MS. PARUTI: Objection.

23 THE COURT: Sustained. Beyond the scope.

24 MR. GAUDET: Nothing further.

25 THE COURT: Nothing further for this witness?

1 MS. PARUTI: No, your Honor.

2 THE COURT: You may step down.

3 That's the government's case?

4 MS. PARUTI: Yes, your Honor, the government
5 rests.

6 THE COURT: All right. We're right on track.
7 It's come up that I have to go to the doctors, so we're
8 going to knock off about 40 minutes today and stop at
9 12:20. This is -- I'm going to give you a recess now
10 for -- till 10 of, and we'll start with the defense's
11 case. We are staying right on track. I do apologize
12 for stopping early. Everyone's moving right along. But
13 I need to do some legal talk with them with the case at
14 this stage.

15 You have not heard all the evidence, please
16 therefore keep your minds suspended, do not discuss the
17 case either among yourselves, nor with anyone else. You
18 may stand in recess until 10 minutes to 11:00. I'll
19 remain on the bench.

20 THE CLERK: All rise for the jury.

21 (Jury leaves, 10:35 a.m.)

22 THE COURT: Please be seated.

23 Does the defense wish to make a motion at this
24 stage?

25 MR. CARNEY: Yes, your Honor. I move for a

1 directed verdict of not guilty.

2 THE COURT: Yes. Your motion is denied. Your
3 rights are saved. You can start at 10 of 11:00, we'll
4 go until 20 after 12:00. I'll call you to the sidebar
5 before I do have to leave -- and I apologize, but I do
6 have to leave, because I'd like your estimate. And I
7 will certainly rely on your good faith estimates. I
8 want to tell the jury, are we going to get the case to
9 the jury next Wednesday the 29th or Thursday the 30th?
10 And you'll be able to tell me, I think, once we've gone
11 that distance. So we'll recess briefly. We'll recess.

12 THE CLERK: All rise.

13 (Recess, 10:35 a.m.)

14 (Resumed, 10:50 a.m.)

15 (Note to judge from jury.)

16 THE COURT: I have various questions from the
17 jury, but I don't have a witness, so we'll see if we
18 have a witness to whom those questions can be asked.
19 I'll give it to Ms. Gaudet and you may call your first
20 witness.

21 MR. CARNEY: May we see the questions?

22 THE COURT: Of course. Of course.

23 (Shows questions to counsel.)

24 (Pause.)

25 THE COURT: Okay, well let's go forward with

1 the evidence. Call your first witness.

2 MR. CARNEY: Thank you, your Honor. The
3 defense calls Joseph Nicholls.

4 THE COURT: He may be called.

5 (JOSEPH NICHOLLS, sworn.)

6

7 *****

8 JOSEPH NICHOLLS

9 *****

10

11 DIRECT EXAMINATION BY MR. CARNEY:

12 Q. Good morning.

13 A. Good morning.

14 Q. Would you please introduce yourself to the ladies
15 and gentlemen of the jury.

16 A. Joseph Nicholls. N-I-C-H-O-L-L-S.

17 Q. What kind of work do you do, sir?

18 A. I'm a digital forensics examiner.

19 Q. What is your educational background?

20 A. I have an electrical engineering degree from Ohio
21 State.

22 Q. For how long have you been in this line of work?

23 A. I've been doing computers since 1974, designing and
24 developing computer systems commercially, and for the
25 past almost 10 years now, I've been doing digital

1 forensics.

2 Q. Have you been found to be an expert by courts of
3 this Commonwealth or elsewhere?

4 A. Yes.

5 Q. I'd like to ask you just a few questions. First,
6 can you remind us what a "peer-to-peer" program means?

7 A. "Peer-to-peer" is, um -- I'll contrast it with the
8 normal website, let's say the website CNN. You click on
9 a link, it takes you to the CNN page. You click on a
10 story. The CNN company, their computer servers will
11 send you back that story with it.

12 Peer-to-peer doesn't use a server, it uses other
13 people's computers, and we'll call those "remote
14 computers." So you can request that items be downloaded
15 to your computer from these remote computers. But
16 there's no central computer to do it from.

17 Q. Does a peer-to-peer file-sharing program enable
18 persons who have Computer 1, with programs on it, to be
19 accessed by Person Number 2 from his own computer?

20 A. Yes, it will -- keeping with that terminology, if
21 Computer Number 2 is the person downloading this
22 information, Computer Number 1, the person that owns
23 that tells the computer that "These are the files I am
24 willing to share with the outside world," it could be a
25 single folder, it could be a single file, it could be

1 multiple folders, it could even be a whole hard drive if
2 that person is willing to share his whole hard drive
3 with the rest of the world.

4 Q. Is it uncommon that people will make their entire
5 hard drive available if they wish?

6 A. It's uncommon, yes, but it can be done.

7 MS. PARUTI: Objection.

8 THE COURT: Well it's not timely. We'll let
9 that stand.

10 Q. Is it possible for a user to obtain every single
11 file on the hard drive of another computer user by
12 employing this peer-to-peer file-sharing?

13 MS. PARUTI: Objection.

14 THE COURT: Sustained.

15 Q. What is -- well can a person identify specific
16 folders to transfer into his computer?

17 MS. PARUTI: Objection.

18 THE COURT: Well I think you're entitled to
19 explore how peer-to-peer file-sharing works and so, um,
20 I'm going to allow that. We've already heard some
21 testimony that you can share music and the like and
22 you're explaining to us how now that works without a
23 server. I wouldn't allow a question about what's
24 possible because we're not going to spend the time going
25 through every conceivable possibility, maybe we'll get

1 some testimony here.

2 But in the normal course -- I think your question
3 was, in the normal course, when it's peer-to-peer,
4 people are sharing particular files, is that the usual?

5 THE WITNESS: Yes, it is.

6 THE COURT: Go from there, Mr. Carney.

7 Q. Is it possible --

8 THE COURT: Well I'm not going for "Is it
9 possible?"

10 MR. CARNEY: Oh, okay. Right, your Honor.

11 Q. Can a person obtain all of the files on a hard drive
12 in one fell-swoop?

13 MS. PARUTI: Objection.

14 THE COURT: He's answered that, and his answer
15 was it's unusual, but "Yes."

16 Is that right?

17 THE WITNESS: That's correct.

18 THE COURT: All right.

19 Q. Is there a term for doing that used by computer
20 users?

21 MS. PARUTI: Objection.

22 THE COURT: No, overruled.

23 A. The term is normally called "sweeping a hard drive."

24 Q. How does one "sweep a hard drive"?

25 MS. PARUTI: Objection.

1 THE COURT: Sustained, there's no foundation
2 for any of this.

3 MR. CARNEY: May I approach, please, for a
4 moment?

5 THE COURT: You may.

6
7 AT THE SIDEBAR

8 THE COURT: If the theory is that Mr. Levin
9 did that and he swept up these objectionable matters,
10 then we've got the order of witnesses wrong. There's no
11 foundation for that. And even though that's possible,
12 we're not going any further. There's no real evidence
13 of that.

14 MR. CARNEY: May I make an offer of proof?

15 THE COURT: Not now.

16 MR. CARNEY: I need to for this. Please?

17 THE COURT: Not now.

18 MR. CARNEY: Your Honor, may I just make an
19 offer of proof?

20 THE COURT: No, you may not.

21 MR. CARNEY: My client's going to testify and
22 I'm going to put on the record what he's going to say,
23 and he's going to say that he swept these files.

24 THE COURT: Well I'll let him step down. We
25 can hear your fellow. Then we'll hear him.

1 MR. CARNEY: You won't accept my offer of
2 proof?

3 THE COURT: It's not a question of not
4 accepting it, I want to hear it under oath.

5 MR. CARNEY: You'll hear it from my witness, I
6 assure you.

7 THE COURT: I hear what you say, but we're
8 going to hear him next, and then we'll hear Nicholls.
9 You tell me how you want to do it?

10 (Pause.)

11 MR. CARNEY: So you won't allow me to explore
12 any further the sweeping of hard drives?

13 THE COURT: That's correct.

14 MR. CARNEY: Um, all right, I'll continue with
15 this witness and I'll recall him after my client.

16 THE COURT: I'll allow that.

17

18 (In open court.)

19 Q. Mr. Nicholls, I'd like to focus your attention on
20 the 13 videos that are the subject of this indictment.

21 A. Yes.

22 Q. Are you aware of the 13 videos that the
23 Commonwealth -- I mean that the government has charged
24 Mr. Levin with knowingly having on his computer?

25 A. Yes.

1 Q. Now, can you tell us what a linked attachment to a
2 file indicates?

3 MS. PARUTI: Objection.

4 THE COURT: No, overruled.

5 A. Yes, the most common way that a link file gets
6 created is if somebody opens a file -- we're talking
7 about videos and pictures, so we'll say somebody puts on
8 a video or a picture, and as we heard earlier the, um,
9 clicking on it by a person will create a shortcut to
10 that picture or video, and that is what we call the
11 "link file," it's linking the user to a file so that
12 they don't have to remember a long path name.

13 Q. Is having a linked file at the end of a type of a
14 folder a clear indication that the user opened that
15 folder?

16 MS. PARUTI: Objection.

17 THE COURT: Oh, no, um -- well you are leading
18 this witness, so I'm going to sustain that. But you may
19 certainly explore this.

20 MS. PARUTI: Your Honor, can we be heard?

21 THE COURT: Oh, I don't think so. This has
22 all been opened up, we'll hear what he has to say about
23 it.

24 Q. What can you determine from a linked file attachment
25 to a folder?

1 A. To a folder or a picture?

2 Q. To a picture or a video.

3 A. The chances are good that that picture was opened
4 through the user interface.

5 Q. If a folder -- rather let's say a video, does have a
6 linked-in signature after the, um, name of the folder,
7 is that clear evidence that the user has opened that
8 folder?

9 MS. PARUTI: Objection.

10 THE COURT: No, sustained, you're leading the
11 witness.

12 Q. If there is a, um, appended to a videotape the word
13 "linked," is that or is that not clear evidence that the
14 user has opened the folder?

15 MS. PARUTI: Objection.

16 THE COURT: No, sustained.

17 If there's an appended link, what does that mean
18 to you?

19 THE WITNESS: To me it means that chances are
20 very high that the user clicked on a picture to view it
21 on his screen.

22 Q. And you saw no linked-in files -- linkage attached
23 to the 13, um, videos that are at issue in this case, is
24 that right?

25 MS. PARUTI: Objection.

1 THE COURT: Again you're leading the witness,
2 but you can ask him --

3 MR. CARNEY: I'm trying not to, your Honor,
4 I'm just anxious to --

5 THE COURT: But what's the -- what's the
6 relationship of linkage to the 13 files to which there's
7 been admission that they're all child pornography? I'll
8 ask that.

9 MR. CARNEY: Okay.

10 THE COURT: Do you understand my question?

11 THE WITNESS: Yes, I do, sir.

12 THE COURT: You tell the jury, without
13 suggesting an answer.

14 A. Since I found no link files that point to these 13
15 images, and following what I just said, to me that means
16 there's a good chance that those images were never
17 clicked on to view on the screen.

18 MS. PARUTI: Objection.

19 Q. Have you reviewed the --

20 THE COURT: Well I'll treat it as a motion to
21 strike and the motion to strike is denied.

22 What does the word "accessed" mean in this
23 parlance with respect to a file being opened?

24 THE WITNESS: "Accessed" means that the
25 contents of the file --

1 THE COURT: Always tell the jury.

2 THE WITNESS: I'm sorry. All right.

3 "Accessed" means that the computer wanted to see
4 what was inside the file when it pulled the data out of
5 the file. If it's a word processing document, it pulls
6 the data out that makes your letter to your grandmother,
7 the characters in it. If it's a picture, it's pulling
8 the 1s and the 0s out of the picture to put them on the
9 screen in various colors. That's "accessing" the file.

10 THE COURT: In other words to display the
11 picture, you then would see the picture?

12 THE WITNESS: Yes, sir.

13 THE COURT: Okay. Go ahead.

14 Can you access something without opening the file,
15 or in computer parlance, open first, then access?

16 THE WITNESS: Um, no.

17 THE COURT: Again tell the jury.

18 THE WITNESS: No. There are other things that
19 can access it, printing, for example, um, and indexing a
20 file can access it and cause that access to make the
21 change. But you cannot display the file on the screen
22 so you can see the picture and then not have an access
23 date.

24 Q. Have you reviewed all of the digital evidence in
25 this trial?

1 A. I have.

2 Q. Was there any evidence whatsoever that showed that
3 these 13 videos were ever opened by Mr. Levin?

4 MS. PARUTI: Objection. Your Honor, may I be
5 heard? It's about the --

6 THE COURT: You may be.

7 MS. PARUTI: Thank you.

8

9 AT THE SIDEBAR

10 THE COURT: Other than the fact that that's
11 leading, but it could be asked in a nonleading way,
12 what's the matter with that?

13 MS. PARUTI: The problem is the expert
14 disclosure was that Mr. Nicholls was going to testify to
15 his opinion about how the files got onto his computer.
16 When I pressed counsel for more information of that, I
17 received an e-mail that said "Joe's opinion is that the
18 file has arrived on the computer via peer-to-peer file-
19 sharing programs." I was never apprised of any other
20 opinion -- this is basically an opinion that these
21 particular files were never accessed.

22 THE COURT: I understand that, but this is a
23 criminal case. Now I -- I am very strict in civil cases
24 where there are requirements for detailed expert
25 reports, but just as you don't have to give any detailed

1 export reports in a criminal case, nor do they.

2 Now I'll accept what you say, we all know what has
3 been disclosed, but what authority have you that where
4 he's testified about these files and it's relevant, I
5 ought not hear his answer?

6 MS. PARUTI: It's highly prejudicial to the --

7 THE COURT: It's intended to be prejudicial.

8 MS. PARUTI: I'm only talking about the nature
9 of the evidence. There's no evidence against it being
10 prejudicial. The manner in which the nature of the
11 evidence has been hidden is prejudicial to the parties
12 and that's a people thing not an evidence thing. And I
13 think it's highly unfair --

14 THE COURT: I hear you, but what authority
15 have you?

16 MS. PARUTI: I don't have a case now. I'm
17 sure I could provide the Court with a case, and I will.
18 And I'll ask the Court to strike his testimony, it's
19 underhanded.

20 THE COURT: Well that will be downstream and
21 we will see. But you may continue.

22 MS. PARUTI: Thank you, your Honor.

23

24 (In open court.)

25 THE COURT: This is not rocket science, when a

1 party calls a witness, he can't lead the witness, he
2 can't ask questions which suggest answers. In other
3 words, he can't ask a question and say, "You were
4 wearing a red hat, weren't you?" if you were the party
5 calling the witness. But that last question could be
6 asked in a nonleading fashion, so let's try it.

7 You've testified you looked over all the digital
8 evidence in this case. What evidence is there now, as
9 an independent examiner here, that Mr. Levin, who
10 undisputed had that computer, accessed those files that
11 are admitted to be child pornography? From the computer
12 because that's all you looked at.

13 THE WITNESS: Right.

14 THE COURT: What evidence?

15 THE WITNESS: I found no evidence to that.

16 THE COURT: All right. Go ahead.

17 Anything else?

18 Q. You mentioned an "indexing program"?

19 A. Yes.

20 Q. Could you explain what an "indexing program" means?

21 A. Yeah, an "indexing program" is, um, similar to a --
22 let's say an encyclopedia index where if you want to
23 find something out about elephants, you go find in the
24 back of the index of the encyclopedia where it says what
25 volume and page contains topics about elephants, and the

1 same thing with the computer. That Windows has the
2 ability to say "I want to see all the files, documents,
3 spreadsheets, whatever, that have to do with elephants."
4 And in order to do that, Microsoft Windows has software
5 that will look inside every file and find each time the
6 word "elephant" in this example is referenced and make a
7 note of that. And that's put into an "indexing file,"
8 is the easiest way to explain it, just like the index of
9 the encyclopedia.

10 So when you type in on the computer "elephants,"
11 Microsoft could then go look in this indexing file and
12 put on your screen "These are the 17 files that I
13 found," or "I," that the operating system found, that
14 referenced "elephants" and then you can pick and choose
15 which one of those you want. But to do that you'd have
16 to look inside each one of those files, and that's an
17 access, it's looking at the contents of each one of
18 those files.

19 Q. Approximately how long does it take to index a
20 single video?

21 MS. PARUTI: Objection.

22 (Pause.)

23 THE COURT: On that foundation, sustained.

24 Wouldn't it depend on how long the video is, that type
25 of thing?

1 THE WITNESS: Um, for a video, no.

2 THE COURT: It would not?

3 THE WITNESS: It would not. It takes
4 milliseconds anyways.

5 THE COURT: All right. So your answer is "no
6 time at all."

7 THE WITNESS: "No time at all."

8 THE COURT: All right.

9 Go ahead, Mr. Carney.

10 Q. What is a "millisecond"?

11 A. A 1,000 -- 3 decimal points, which is a thousand.
12 1,000.

13 Q. So is that 1/1000th of a second?

14 A. Yes, some multiple of that. A short time to a human
15 being.

16 Q. All right. Now there has been evidence in this case
17 that the 13 videos were accessed on January 31, 2015?

18 A. That is correct.

19 Q. Are you aware of that?

20 A. Yes, I am.

21 Q. Are you or are you not able to determine whether it
22 was -- whether they were accessed on that day as part of
23 the indexing function of Microsoft Windows?

24 MS. PARUTI: Objection.

25 THE COURT: No, he may have it.

1 Can you answer that?

2 THE WITNESS: Yes, sir, I can.

3 THE COURT: In nonleading ways, can you tell
4 how or by what mechanism they were accessed? And your
5 answer to that is "Yes, you can"?

6 THE WITNESS: In this case the answer is "Yes,
7 I can."

8 Q. Pleased explain to the ladies and gentlemen of the
9 jury how you can tell this fact?

10 MS. PARUTI: Objection.

11 THE COURT: Overruled.

12 A. I can tell in that they were all done within seconds
13 of each other and the blocks are like 5 in 1 second and
14 5 in another. It was all sequential. So I looked
15 inside the system and found that this sequential access
16 on January 31st started at approximately 1:48 a.m. and
17 continued to almost 9:00 a.m., multiple hours, and in
18 that I found there were thousands and thousands of files
19 that were accessed, um, subsequently. And --

20 MS. PARUTI: Objection, your Honor.

21 THE COURT: Had you finished your answer to
22 that question that he gave you, Mr. Nicholls?

23 THE WITNESS: Um, no.

24 THE COURT: So you finish your answer to his
25 question.

1 THE WITNESS: All right.

2 A. So there were thousands of files and the sequential
3 access stopped and then a little bit later there was
4 access to the indexing files -- the index I talked about
5 like the index of an encyclopedia, and those were the
6 only accesses for a long time on that day. So that
7 tells me, because it was sequential, and it was all in
8 the files, that it was going to -- that it would
9 normally be indexed, and the index files were also
10 updated in the same time frame, so that it was the
11 Windows indexing software that caused those access dates
12 of January 31st.

13 Q. Mr. Nicholls, do you have an opinion, to a
14 reasonable degree of scientific certainty, whether the
15 defendant's computer was indexed on January 31st, 2015?

16 MS. PARUTI: Objection.

17 THE COURT: Overruled.

18 A. I do.

19 Q. Would you please tell the jurors what your opinion
20 is to a reasonable degree of scientific certainty?

21 A. That again because of the sequential nature and the
22 last two files that were updated, it's highly likely --
23 I don't know the number to put on it, but that it's very
24 highly likely that it was the indexing software that
25 caused those access dates to be set the way they were.

1 Q. And for how long was each of those 13 folders open
2 during this indexing process?

3 A. (Pause.) I am hesitating, the distinction was
4 between, in this case, because it was not a human that
5 opened them, but a computer.

6 MS. PARUTI: Objection.

7 A. I would like to understand what you mean by
8 "opened"?

9 MS. PARUTI: Objection, move to strike.

10 Q. All right.

11 THE COURT: Wait a minute. Wait a minute.
12 The motion to strike is denied. We'll let that stand as
13 his answer. And you ask another question, Mr. Carney.

14 Q. How long were each of these videos accessed by the
15 computer during the indexing?

16 THE COURT: Well I'm not clear on a foundation
17 question, which is can you tell that from your
18 examination?

19 THE WITNESS: Yes.

20 THE COURT: All right. You may answer his
21 question.

22 How long?

23 Q. How long was each video accessed during the indexing
24 process that occurred on January 31st, 2015?

25 A. We're talking again about milliseconds because

1 access in this case does not mean displayed on the
2 screen.

3 Q. Thank you very much.

4 MR. CARNEY: That's all I have, your Honor.

5 THE COURT: Any redirect?

6 MR. CARNEY: And I reserve my right to recall
7 the witness, your Honor.

8 THE COURT: I've said you could.

9 Go ahead.

10

11 CROSS-EXAMINATION BY MS. PARUTI:

12 Q. Mr. Nicholls, you're being paid obviously for your
13 work on this case?

14 A. Yes, this is my job.

15 Q. How much are you charging an hour?

16 A. \$205 per hour.

17 Q. Okay. And how many hours have you been here today?

18 A. Um, a little over 2 1/2.

19 Q. Okay. And how many hours were you here yesterday?

20 A. Um, 5.

21 Q. How many hours total do you expect to bill for this
22 case?

23 A. I'd have to go check my records for that.

24 Q. Okay. Was yesterday the first day you worked on the
25 case?

1 A. No.

2 Q. Okay. You've been contacted by the FBI at least two
3 times, correct?

4 A. Correct.

5 Q. And you participated in phone conversations with
6 agents, correct?

7 A. Correct.

8 Q. So there's hours involved in those. How many hours
9 did you spend with the FBI?

10 A. The FBI? I spent five days with the FBI.

11 Q. Five whole days?

12 A. Yes.

13 Q. And so when you say "days," you mean an 8-hour
14 workday?

15 A. Um, 6 hours.

16 Q. 6 hours. So 6 times 5 is 30. So times \$205 an
17 hour, is that what you said?

18 A. Yes.

19 Q. Okay. And when were you first contracted to work on
20 this case, what year?

21 A. Um, yes, it was last -- um, almost a year.

22 Q. Okay. So, um, apart from those several days worth
23 of time that you referenced, did you work other days for
24 payment by this defendant?

25 A. I did, yes.

1 Q. And approximately how many?

2 A. Again I'd have to check my records.

3 Q. You don't remember that?

4 A. No.

5 Q. Okay. But you do -- I notice you don't have any
6 notes before you?

7 A. Correct.

8 Q. Okay. Is this the only case you're working on right
9 now?

10 A. No.

11 Q. Okay. How many other cases are you working on right
12 now?

13 A. Um, my active case log I have, um, 63.

14 Q. Okay. So you have 63 other cases. You remember all
15 the details about --

16 Did you generate a report about your examination
17 of the imaged hard drive in this case?

18 A. No.

19 Q. You didn't?

20 A. No.

21 Q. So do you have notes?

22 A. I have notes.

23 Q. You do. Okay. So you can rely on your notes as you
24 testify, um, and you remember all these details about
25 indexing and files you found, but you can't remember how

1 many hours you're going to bill to get paid on this
2 case?

3 MR. CARNEY: Objection, argumentative.

4 THE COURT: Overruled.

5 A. Um, yes.

6 Q. Okay. Thank you.

7 A. I'd reviewed the notes about those topics before I
8 took the stand.

9 Q. Okay. Now you said -- you're talking a lot about
10 the access date of certain files here. It is fair to
11 say, isn't it, that the access date just tells you about
12 the last time that something happened to that file,
13 correct?

14 A. That's correct.

15 Q. Okay. It tells you nothing, absolutely nothing
16 about what happened before that date, correct?

17 A. Correct, the computer only keeps track of the last
18 time.

19 Q. The last time. And sometimes for the first time,
20 right, the created date?

21 A. The created date, yes.

22 Q. And that created date is typically used to signify,
23 or we typically, depending on the operating system we're
24 using and lots of other variables, but we typically can
25 determine when a particular file was created on these

1 computers, so on a particular hard drive, not that it
2 was ever created like when the video was made, correct?

3 A. Correct.

4 Q. All right. So we know, at the very least, that
5 these files we've been talking about made their way onto
6 Alex Levin's computer in 2011, correct?

7 A. Yes.

8 Q. Okay. And if you need to refer to exhibits that we
9 have, absolutely tell me and I can call those up. I
10 don't want you to have to rely on your memory.

11 A. All right.

12 Q. So we know that they made their way onto his
13 computer in 2011 and they were last accessed in some way
14 in 2015, correct?

15 A. Correct.

16 Q. Now you were sitting in the courtroom watching the
17 government's testimony today, correct?

18 A. Correct.

19 Q. What about yesterday?

20 A. I was not.

21 Q. Okay. Did you hear about the testimony yesterday?

22 A. I did not.

23 Q. You didn't hear anything about any testimony of any
24 government witness yesterday?

25 A. I was asked some questions after court adjourned

1 yesterday, but, um, no, I was not given the narrative
2 about what was testified to.

3 Q. Okay. Have you reviewed the exhibits in this case?

4 A. I have.

5 Q. Okay, so you have some familiarity with those?

6 A. Yes.

7 MS. PARUTI: Just give me one moment, please,
8 sir.

9 (Pause.)

10 Q. Okay. You were talking about indexing. Um, so if
11 we --

12 MS. PARUTI: If we could have --

13 Q. You were here Monday --

14 MS. PARUTI: I'll just give the jurors time to
15 get their screens out.

16 THE WITNESS: Yes.

17 (Pause.)

18 Q. Okay. So it looks like we're up and running.

19 So you know what this exhibit is, correct?

20 A. Yes, this is an "Access Data Registry Report."

21 Q. Okay. And you're familiar with registry reports?

22 A. Yes.

23 Q. Okay. And you have no question that the data
24 contained within a registry report is actually the data
25 that was recorded by the system, right?

1 A. Correct.

2 Q. All right. So, um, you would agree then that it's
3 accurate. And when we're looking at this first page,
4 um, here, um, the -- if you look at the bottom of the
5 page, the line number that says "25" and then it has a
6 short target name?

7 A. Yes.

8 Q. Okay. And that's the one that has some symbols, um,
9 which are like peanuts maybe and then "pedo woman" and
10 numbers, correct?

11 A. Correct.

12 Q. All right.

13 MS. PARUTI: Can you go to the next page,
14 please.

15 (On screen.)

16 Q. And you see, actually at the top of the page, the
17 link file for that particular document or that
18 particular file, correct?

19 A. Correct.

20 Q. All right. So a link file, you said, is something
21 that, um, existed on a computer and was opened on the
22 computer at some point?

23 A. Yes.

24 Q. Okay. So we know that that was opened on the
25 computer.

1 Did you look to see if that particular file
2 existed on the computer?

3 A. I did.

4 Q. Okay, and did you find that particular file on the
5 computer?

6 A. No.

7 Q. Okay. So that means that it was either deleted --
8 correct?

9 A. Correct.

10 Q. Were you able to search deleted space in this
11 particular computer?

12 A. I was not.

13 Q. Okay. Did you try to?

14 A. No, um, the size of these hard drives, it would have
15 taken more than the 5 days that I did spend with the
16 FBI.

17 Q. Okay. So, um, the size of this particular drive,
18 um, it had a lot of files on it, correct?

19 A. I'm sorry, say that again?

20 Q. This drive, the imaged hard drive that the files
21 came from, had a lot of files on it, correct?

22 A. Yes, thousands.

23 Q. Thousands and thousands of files?

24 MR. CARNEY: Your Honor, may I be heard,
25 please?

1 THE COURT: You may.

2

3 AT THE SIDEBAR

4 MR. CARNEY: Your Honor, I object to this
5 testimony, it's applying to files of which there's no
6 remnant whatsoever on the computer, and if it had been
7 deleted, it could have been found on the computer. It's
8 also beyond the 13 videos that your Honor said we would
9 focus on.

10 THE COURT: Now wait a minute. I have allowed
11 in evidence and I've confined your judicial admission to
12 those 13 videos. You've made a point of that in your
13 motion and I indeed strike them from the physical
14 evidence. You put him on the stand and he has
15 demonstrated that -- his knowledge about computers. My
16 order stands. We're not going to get into anything
17 about deleted videos beyond the ones that have the names
18 that we've already talked about.

19 But nothing that I hear her asking about files
20 that were -- and I have instructed that you have to come
21 to the sidebar if anyone wants to get into that. I see
22 no reason to, but she may cross-examine him.

23 All right?

24 MS. PARUTI: Just one thing. I heard in some
25 of the questioning -- and I don't remember, I think it

1 was the cross of Agent Phelps, where the question was
2 asked, "You didn't find any other child pornography?"
3 And the answer was "No." But the answer really was
4 "Yes, there was other child pornography found," but
5 they're not going to get into the other child
6 pornography.

7 So I just want to make sure that I hear, at least
8 keeping that I cannot inquire about how that referred to
9 some additional child pornography that was found, I just
10 want to make sure that he understands that the defense
11 will not be able to, um --

12 THE COURT: -- argue that there is no other.
13 That's how I interpret my ruling.

14 MS. PARUTI: All right. Great. Thank you.

15
16 (In open court.)

17 THE COURT: Proceed, Ms. Paruti.

18 Q. Mr. Nicholls, do you remember my question?

19 A. I do not.

20 Q. I think we've been talking about -- I think you had
21 said that there were -- that given the size of this
22 drive, it was pretty big and so you were not able or you
23 didn't have time to, um, analyze the unallocated space
24 or the deleted space in this drive?

25 A. Correct.

1 Q. Okay. So you have no idea whether or not any of
2 these files that are noted as deleted files here, that
3 don't have original or target files present on these
4 normal spaces on the hard drive, you have no idea of
5 whether or not they were located in unallocated space?

6 MR. CARNEY: Speculative, your Honor. I
7 object.

8 THE COURT: Overruled.

9 A. Right, I don't know where these files are or were.

10 Q. Okay. Now, in a drive of that size --

11 MS. PARUTI: Actually, could you put up 6,
12 please.

13 (On screen.)

14 Q. You said that the drive was pretty huge. And you
15 would agree, wouldn't you, that it also had a pretty
16 extensive, um, file structure, a user-defined file
17 structure within the drive itself, wouldn't you?

18 A. Yes.

19 Q. Okay. So when you say that, so that everybody knows
20 what we're talking about, um, we mean that there would
21 be sort of the beginning folder, and that was sort of
22 the root folder, right, that's where everything started?

23 A. Yes.

24 Q. And that underneath that you have other subfolders,
25 right?

1 A. Many subfolders.

2 Q. Right. And would you say hundreds in this
3 particular case or thousands?

4 A. Um, there was definitely thousands.

5 Q. So thousands of subfolders where there was a
6 different type of data stored on this computer, correct?

7 A. Correct.

8 Q. So, for example, there were Word documents that you
9 saw?

10 A. Yes.

11 Q. Okay. And I just want to be clear, did you actually
12 look at certain items that were still physically on that
13 hard drive?

14 A. I looked only at the contents of items that had been
15 specified in the government's reports.

16 Q. Okay. So you only looked at, um -- by that do you
17 mean you only looked at like child pornography?

18 A. Um, I -- yes, there were those, um, just to make
19 sure that there's no typo in the names.

20 Q. Okay.

21 A. Um, the folders they were in.

22 Q. Uh-huh.

23 A. I did look at -- we'd call it a "tree," a folder
24 there having more folders in it, subfolders and
25 subfolders and subfolders, it's commonly called a

1 "tree," and I did look at the meta data about the files
2 in that tree. "Meta data" meaning information about the
3 file.

4 Q. So you looked at that information, right?

5 A. Yes.

6 Q. Okay. And that's to make sure that the government
7 wasn't like making up files or saying they existed
8 somewhere that they didn't, correct?

9 A. I haven't found a case yet where they made it up.
10 I've seen typos, but I would not say they made it up.

11 Q. Okay. And there were no typos in this case, were
12 there?

13 A. Um, not in this case that I found.

14 Q. Okay. So -- but so you said the "tree," it starts
15 like big and then there's folders underneath and then it
16 grows and it grows?

17 A. Yes.

18 Q. And some of the -- but you're aware, from reviewing
19 generally the contents of the hard drive, that there
20 were documents there?

21 A. Yes.

22 Q. Okay. And that there were, um, different types of
23 movie files there?

24 A. Yes.

25 Q. So "avi" is one sort of type of a file?

1 A. Yes.

2 Q. And "avi," does that just tell the computer or the
3 program what it needs to be played or how it is to be
4 played?

5 A. That tells Windows the kind of file it thinks it is.
6 But it's not absolute. You can change it.

7 Q. Okay. But you also saw all types of files there in
8 all those subfolders that were picture files, correct?

9 A. Yes.

10 Q. Okay. And, um, would it be fair to say then that
11 to -- that unless you have a specific distinct memory of
12 where a particular file that you wanted to look at was
13 located in those thousands of folders, um, that you
14 would probably have to use some way to -- or you would
15 have to search for a particular file to locate it, would
16 that be fair to say?

17 A. If you had no idea where it was, yes.

18 Q. Okay. So, for example, if you had multiple folders
19 labeled "download," um, and you were looking for one
20 specific file, but you couldn't remember which folder it
21 was in, Windows allows you to actually search your
22 computer to find that, doesn't it?

23 A. Yes.

24 Q. Okay. And Windows -- are you familiar with Windows
25 7?

1 A. I am.

2 Q. Are you aware that Windows 7 was the operating
3 system installed on Alex Levin's computer in August of
4 2015?

5 A. Yes, Windows 7 Ultimate.

6 Q. So you're familiar with that?

7 A. Yes.

8 Q. And that was part of your exam, to make sure you
9 knew what the parameters of your examination were going
10 to be, correct?

11 A. Correct.

12 Q. All right. So you know that then in Windows 7 it
13 allows users to search the contents of the whole
14 computer by simply typing a search word?

15 A. Yes.

16 Q. Okay. And if somebody types in a search word -- for
17 example I think you used the term "elephant" during your
18 direct examination, um, the computer system would then
19 be able to search, using those indexes that you talked
20 about --

21 A. Yes.

22 Q. -- all the contents of all the files to find files
23 that matched those search terms, correct?

24 A. Yes.

25 Q. Okay. And is it fair to say then that when that

1 type of search happened, that that's also something that
2 could trigger a particular access date because it's in
3 fact being touched by the indexing function?

4 A. Um, no.

5 Q. You're saying the access date cannot be affected by
6 a file being searched for and then hit on if it
7 contained a search term that was used?

8 A. Yes, it could have, but just the fact that he
9 searched for it will not change it. But if you then
10 subsequently click on it, no matter how you got the name
11 of the file on your screen, that would change the access
12 date.

13 Q. Okay. And so if, for example, you were searching
14 the term "elephant" and, um, one particular folder had
15 like, I don't know, four or five files with the term
16 "elephant" in it, or somewhere in that file, that all of
17 those might have the same access date, is that
18 conceivable?

19 A. Um, I don't think I understand your question.

20 Q. All right, I'll move on from that.

21 Now when we're talking about, um, access dates, I
22 know you were talking about how indexing can cause
23 access dates to be the same?

24 A. Yes.

25 Q. But the access date can also be changed by a user

1 manually clicking on the file, as you just said,
2 correct?

3 A. Yes, and the way this computer was configured,
4 manually clicking on a file would update the last access
5 date.

6 Q. Okay. So this computer, Alex Levin's computer, if
7 you click on a file, that is something that would change
8 or update the access date?

9 A. Yes.

10 Q. But nothing about this operating system changes the
11 fact that the system doesn't log every single access
12 date, correct?

13 A. For these user files, the way it was configured, it
14 doesn't log any -- it logs every access date, but it
15 only keeps the last one.

16 Q. Got it. So you can't tell, for example, if a file
17 has been, um, searched for more than once and then
18 clicked on more than once, you can't tell that just from
19 analyzing the data that's available to you?

20 A. No, but it would only be speculation to try to say
21 that.

22 Q. Okay. Now, you talked about, um, in peer-to-peer
23 software, when you were talking about that, um, that
24 when you set up --

25 So are you familiar specifically with "Frostwire"?

1 A. I have not used "Frostwire" myself.

2 Q. Okay. Are you familiar with it?

3 A. I'm familiar with it.

4 Q. Okay. Are you familiar with Shiraza?

5 A. Yes.

6 Q. Have you used that yourself?

7 A. No.

8 Q. Okay. Do you know what sort of file-sharing
9 protocol both of those use?

10 A. Um, they all can use multiples in terms of --

11 Q. Well my question is do you know which file-sharing
12 protocol Frostwire uses? Yes or no.

13 A. Frostwire can use multiples.

14 Q. Okay. So you said then they all can. I want to
15 know about Frostwire. Frostwire can use multiple types?

16 A. Yes.

17 Q. Okay. And what about Shiraza?

18 A. Yes.

19 Q. Okay. But regardless of what the file-sharing
20 protocol is -- and when we say "protocol," we just mean
21 basically how the computers talk to each other, right?

22 A. Right.

23 Q. On the network?

24 A. Just like the State Department has a protocol of how
25 it talks to Germany and how it talks to Russia, the

1 computers have a protocol that define the sequence of
2 handshakes, exchanges, and messages, so that they can
3 talk to each other and each other knows what is really
4 meant by the data that's going back and forth.

5 Q. Well I don't think you mean Russia, but I think --

6 A. Yes, I'm sorry.

7 Q. But I think one thing that the computer probably
8 does need to know is that, um -- and you can tell us,
9 that in order for somebody to be a member of a file-
10 sharing network, they have to download software and
11 install it on their computer, right?

12 A. Correct.

13 Q. So that's a choice they make, they say "I want to be
14 able to access files that other people have that I want,
15 so I'm going to put that program on my machine"?

16 A. Yes.

17 Q. Okay. And, um, then once they do that, they say "I
18 know what files on my computer I'm going to let other
19 people have access to and I'm going to check that off,"
20 right?

21 A. Um, sometimes they leave a default, but, yes, they
22 can check it off.

23 Q. Okay. And so sometimes the default, it depends on
24 the program, doesn't it?

25 A. Yes.

1 Q. Okay. And then for them to actually get a file from
2 another person on a peer-to-peer network, like Shiraza
3 or Frostwire, they have to actually tell the program
4 what kind of file they want, right?

5 A. They have to specify -- sometimes it's the kind,
6 which would get them all the files of that kind,
7 sometimes it's an individual file name, and sometimes
8 it's all the files that contain these specific letters
9 in it.

10 Q. So letters like "PTHC," for example?

11 A. That's a possibility, yes.

12 Q. All right.

13 MS. PARUTI: Just one moment, sir.

14 (Pause.)

15 MS. PARUTI: Actually can we go back to
16 Exhibit 26, Page 6.

17 (On screen.)

18 Q. Okay. Are you familiar, sir, do you see on the
19 bottom sort of the third of the page there's a, um --
20 yes, there's a part that says "word wheel query"?

21 A. I am.

22 Q. Okay. And you would agree that that, um, is the
23 part, I guess, of the registry file that groups or logs
24 and reports the different sorts of searches that
25 appeared on this computer, correct?

1 A. Searches against this computer's hard drive, yes.

2 Q. Yes, so not the internet we're talking about?

3 A. No, not the internet.

4 Q. We're talking about somebody, a user of the
5 computer, um, actually typing in letters that they want
6 to look for?

7 A. Yes.

8 Q. Okay. So -- and you can't tell what -- it's fair to
9 say that this registry report doesn't tell you exactly
10 when that search was entered, correct?

11 A. No, um, all it tells you is the last -- the time and
12 date of the last one that was done.

13 Q. Okay. So on this particular one, if we can
14 highlight the last written time?

15 A. Yes.

16 Q. And what's that last written time here? Just the
17 date. We don't need the time.

18 A. February 12th, 2015.

19 Q. Okay, so February 12th of 2015 was the last time
20 that this was written, correct?

21 A. Correct.

22 Q. All right. So, um, and it's fair to say, isn't it,
23 that if we --

24 MS. PARUTI: That we're starting at 68 and
25 then going to the next page, please.

1 (On screen.)

2 Q. That all of these particular search terms are listed
3 in the order from most recent to just recent, correct?

4 A. Um, I know they're in order, but I don't know if
5 they're chronological or reverse chronological in this
6 report.

7 Q. Okay. Is there a way that Windows -- well never
8 mind. Strike that.

9 But you know that these are, um, basically sort of
10 like -- so, for example, if we're looking at the item
11 that's listed as 67, we see that search term was
12 "Microsoft media player," correct?

13 A. Correct.

14 Q. Okay, and we know that that was searched either
15 immediately before or immediately after "media player,"
16 right?

17 A. Correct.

18 Q. Okay. And then -- and so forth and so on throughout
19 the list?

20 A. Correct.

21 Q. Okay. So then --

22 MS. PARUTI: If we could go to Page 10,
23 please.

24 (On screen.)

25 Q. So we see at Line Item 13, we see that some user of

1 this computer searched for "TOR," correct?

2 A. Correct.

3 Q. All right. And you know "TOR" to be, um, basically
4 a browser that enables people to anonymously access data
5 on the internet, correct?

6 A. Yes, it stands for "The Onion Router."

7 Q. Okay. And it allows people to access the regular
8 internet that we use, but also another portion of, um,
9 not really the internet, but the dark web or that part
10 of the deep web, correct?

11 A. (Silence.)

12 Q. Are you familiar with that?

13 A. Oh, yes.

14 Q. Okay. So we know that right around the time that
15 somebody searched for "TOR," they also searched for
16 "Droid" at Number 42, do you see that?

17 A. Yes.

18 Q. Okay. And we also know right around that time they
19 searched for "Motorola," correct?

20 A. Correct.

21 Q. All right. Now if we go to Page 11, we can see, at
22 Number 33, that somebody typed in the letters "PTHC"
23 into this computer looking for, um, files on this
24 computer that would include that term, correct?

25 A. Correct.

1 Q. Okay. And a search -- you'd agree with me that a
2 search for those letters, "PTHC," would return files
3 that had PTHC appearing anywhere in them, correct?

4 A. Yes.

5 Q. So not just files that matched that were named like
6 "PTHC.doc" or "PTHC.avi," correct?

7 A. Correct.

8 Q. All right. So any -- by typing this into the search
9 bar on the -- and in Windows 7 it would be sort of on
10 the desktop, right?

11 A. Right.

12 Q. So you're looking at "Computer" down on the left,
13 you type it in, and then hit "Go" or "Search" or
14 whatever it says, and then the computer looks through
15 everything on the computer, through each of those -- for
16 example in this case thousands of folders, and it will
17 return any files that are responsive to that request,
18 correct?

19 A. Correct.

20 Q. All right. Do you see just a few searches down in
21 there there's also one labeled "Incomplete"?

22 A. Yes.

23 Q. Okay. Are you -- you looked at the file structure
24 for the child pornography files that were found on Alex
25 Levin's computer, did you not?

1 A. Yes.

2 Q. And you know then, don't you, that some of those
3 files were found in a folder that was called
4 "Incomplete," correct?

5 A. Yes.

6 Q. Okay. And you know that that particular folder, um,
7 wasn't necessarily assigned or associated with any other
8 particular program file, is that correct?

9 A. Um --

10 Q. If you need to see the exhibit, I can call it up,
11 um, to be fair.

12 A. I remember that, um, some folders were called
13 "incomplete," but other folders were not.

14 MS. PARUTI: Actually why don't we bring up
15 the exhibit, Ms. Johnson, off the playlist.

16 (On screen.)

17 Q. Now let's look at Exhibit 20. Okay?

18 MS. PARUTI: Can we blow up the upper left
19 panel, please. (Enlarged.) Okay.

20 Q. So can you see Exhibit 20 on your screen, sir?

21 A. Yes.

22 Q. Okay. And you see a folder that's highlighted that
23 says "Incomplete"?

24 A. Yes.

25 Q. All right. You would agree that, um, that

1 "Incomplete" folder is associated with Shiraza?

2 A. Yes.

3 Q. Okay. And would you also agree that, um -- well I
4 know you said you didn't use Shiraza or you haven't used
5 Shiraza. Are you familiar with how it, um, creates a
6 sort of default, um, folder structure?

7 A. Yes.

8 Q. All right. Would it be fair to say that often or
9 that files -- that Shiraza as a program would create a
10 folder called "Incomplete" for files that did not
11 completely download, um, from start to finish?

12 A. Yes, it can take sometimes days for these file-
13 sharing applications to download folders, which is why
14 they create a place "Incomplete" to keep it while it's
15 still getting pieces from various places.

16 Q. Okay. So it can take days or TOR could take seconds
17 sometimes to download a particular folder, correct?

18 A. Correct.

19 Q. A file, excuse me, from a file-sharing software
20 program?

21 A. Or folders.

22 Q. Or folders, right?

23 A. Yes.

24 Q. And sometimes there are folders called "Downloads,"
25 have you seen that in your experience?

1 A. Yes.

2 Q. Okay. And, um, are you familiar with how users of
3 file-sharing software, um, use the programming or the
4 programs?

5 A. I am familiar with many different ways to use it and
6 software development, um, file-sharing is used quite
7 often.

8 Q. Okay. But it would be fair -- if somebody's looking
9 to download a lot of files at once, you're familiar with
10 -- or you would say then that it's pretty frequent that
11 they might search for certain types of files, click on
12 all the ones they want, and then maybe go to something
13 else while the file's downloaded so that they could come
14 back and get them later once they were there, rather
15 than sitting and watching the screen for that download
16 process to finish?

17 A. Right, once the request had been put in to download
18 the folder, let's say, and it may take a week to
19 download a whole folder, it happens in what we call the
20 "background," there's no interaction by the user needed
21 and they can go off and do other things.

22 Q. Okay, perfect. But sometimes the files themselves,
23 for whatever reason, because the person they were
24 getting it from might shut down their computer, so when
25 they were in mid-download, so then -- if I was

1 downloading something from you, for example, and we both
2 are using Shiraza, and I say, "Oh, I want that file from
3 elephant.doc," and I tell my computer, "I want
4 elephant.doc," the computer will go and look and see who
5 else has that file, correct?

6 A. Correct.

7 Q. All right. And then the software will determine
8 what's the easiest way, like the path of least
9 resistance to get that file, correct?

10 A. Yes, or multiple passes to get that file.

11 Q. Or multiple, because on file-sharing networks, the
12 computers aren't looking at the word "elephant.doc," are
13 they?

14 A. No, they aren't.

15 Q. They're looking at hash value of the file, correct?

16 A. In these file-sharing programs, yes.

17 Q. Okay.

18 MS. PARUTI: So let's collapse that window and
19 let's blow up the bottom panel the best you can.

20 (Enlarged.) Yes, that's fine.

21 Q. Okay. So do you see these title names on the screen
22 in a way that -- are they big enough for you to read?

23 A. Oh, yes.

24 Q. So you see the first one that's checked and it's
25 pink and it says "ED 2K"?

1 A. Yes.

2 Q. Okay. Are you aware that that's a prefix that
3 signifies some relation to "EU" or "eDonkey"?

4 A. "EDonkey," yes.

5 Q. Okay. And "eDonkey" is another type of file-sharing
6 software?

7 A. There are dozens of them, yes.

8 Q. Okay. And, um, is it fair to say that these numbers
9 and letters here, those likely refer to some portion of
10 the hash value of the file that was searched for,
11 correct?

12 A. Usually, yes.

13 Q. Okay. Thank you.

14 MS. PARUTI: And you can collapse that.

15 (On screen.)

16 THE COURT: What is the "hash value" of the
17 file?

18 THE WITNESS: The "hash value" is a term we
19 use for, um, what we call getting a "digital
20 fingerprint" of what's inside the file, the content we
21 keep talking about. You can rename a file anything, but
22 the content, it stays the same or will have the same
23 digital fingerprint or hash value, and it's done with a
24 fancy software, algorithms, math, that type of stuff.
25 But it's easiest to think of it as a "digital

1 fingerprint" of what the actual content is, which may or
2 may not relate to what the name is on the file.

3 Q. Okay, thank you.

4 MS. PARUTI: Could we please see Exhibit 21,
5 please.

6 (On screen.)

7 MS. PARUTI: Okay, and just blow up the left
8 hand side.

9 (Enlarged.)

10 Q. Okay, Mr. Nicholls. Do you know what you're looking
11 at here?

12 A. Um, yes.

13 Q. Okay. So this is -- this is, um, showing basically
14 the file structure of one very small piece of this
15 computer, right?

16 A. Yes.

17 Q. Okay. And, for example --

18 MS. PARUTI: Let's see if I can do this
19 without, um, blowing it up.

20 (On screen.)

21 Q. So we're looking at these vertical lines, um, so,
22 for example, on the left-hand side there's like a
23 vertical dotted line, and then another one next to it,
24 and another one, and they appear to get closer together.
25 Do you see what I'm talking about?

1 A. Yes.

2 Q. What do those signify?

3 A. This, um, what's on the screen tries to show the
4 folder structure of the tree. And so the vertical lines
5 lets a viewer of this try to keep in mind which folders
6 are contained within a parent folder.

7 Q. Okay. We just can't see all of the folders like
8 being open because there's so many of them, right?

9 A. Correct.

10 Q. Okay, but what we can see on here includes a folder
11 named "Incomplete"?

12 MS. PARUTI: Could you highlight that, please.

13 (Enlarged.)

14 Q. Do you see that?

15 A. I do.

16 Q. Okay. All right. So that has the same level as
17 Frostwire, correct?

18 A. It's not at the same level as Frostwire, no.

19 Q. Okay, tell me where that is?

20 A. That is a subfolder of the folder called, um,
21 "Program Files."

22 Q. Okay, so "Program Files" --

23 MS. PARUTI: Would you highlight that, please.

24 (On screen.)

25 Q. So that's the folder and then a subfolder is

1 "Incomplete"?

2 A. Yes.

3 Q. Okay. So "Incomplete" is not a subfolder of
4 Frostwire, though, right?

5 A. No, I'm sorry, I want to correct my statement. It's
6 a subfolder of "Virtual Store."

7 Q. Okay. And you can tell that -- and it's kind of
8 confusing, right, because there's so many different
9 files and so many different levels?

10 A. Yes, and the arrows there cover over some of the
11 dotted lines.

12 Q. Okay. So "Incomplete" is a subfile of "Virtual
13 Store"?

14 A. Correct.

15 Q. Okay. But it's not a subfolder of Frostwire?

16 A. That's correct.

17 Q. Okay. And --

18 MS. PARUTI: Will you pull up that, please.

19 (On screen.) Okay.

20 Q. But you would agree with me, wouldn't you, that --

21 MS. PARUTI: Can we just blow up the bottom
22 left panel, please.

23 (Enlarged.)

24 Q. So all of these files, um, that -- all of these
25 files in that folder were actually on the computer,

1 correct?

2 A. Yes.

3 Q. Okay. They were present on the computer when it was
4 seized from Alex Levin, is that correct?

5 A. Correct.

6 Q. Okay. So the access date really doesn't matter,
7 does it?

8 A. I'm sorry, say that again?

9 Q. The access date doesn't negate the fact that they
10 were on the computer on August 12th of 2015, does it?

11 A. No, the access date was --

12 Q. Okay, thank you.

13 (Counsel is seated.)

14 MR. CARNEY: May he finish his last answer,
15 please?

16 THE COURT: You'll have a chance further to
17 inquire. He's answered it.

18 THE WITNESS: I'm sorry, your Honor, but I
19 forget the question now?

20 THE COURT: Well now he's going to ask you
21 other questions, so we'll pick it up from there.

22 THE WITNESS: Oh, okay.

23 THE COURT: Any redirect, Mr. Carney?

24 MR. CARNEY: Yes, thank you.

25

1 REDIRECT EXAMINATION BY MR. CARNEY:

2 Q. The prosecutor asked you questions about ways an
3 individual can transfer a file on peer-to-peer. Do you
4 remember that?

5 A. Yes, I do.

6 Q. And you stated it can be transferred by the title of
7 the file alone, correct?

8 MS. PARUTI: Objection.

9 THE COURT: No, well he may ask that.

10 Did you so state?

11 A. It can be selected by the user by title.

12 Q. Okay. Did you also say it can be selected by the
13 kind of file it is?

14 A. Yes.

15 Q. Can a person transfer all of the files on a
16 peer-to-peer server, um, if he has that server's
17 permission?

18 MS. PARUTI: Objection.

19 THE COURT: Yeah, in view of my earlier
20 rulings, I'm going to stand on that, and we'll proceed
21 as we've discussed.

22 Anything further?

23 Q. You said that peer-to-peer is quite common among a
24 particular group. Do you remember saying that?

25 MS. PARUTI: Objection.

1 A. Yes, I said it was commonly used by software
2 developers.

3 Q. Thank you.

4 MS. PARUTI: Objection.

5 THE COURT: Commonly used by software --

6 THE WITNESS: Developers.

7 THE COURT: Developers. Thank you. I'll let
8 that stand.

9 MS. PARUTI: Move to strike, your Honor.

10 THE COURT: Motion to strike is denied.

11 Anything further for this witness?

12 MS. PARUTI: Just on that.

13 THE COURT: Well, of course, you may inquire.

14 MS. PARUTI: Thank you, your Honor.

15

16 RECROSS-EXAMINATION BY MS. PARUTI:

17 Q. Mr. Nicholls, you said it's commonly used by
18 software developers, correct?

19 A. Yes.

20 Q. All right. Would you say that your -- in your
21 experience -- well have you been -- you said you had
22 about 60-something cases right now?

23 A. Correct.

24 Q. How many of those are child pornography cases?

25 A. Um, 10 maybe.

1 Q. Only 10? How many child pornography cases have you
2 worked on in your career in this capacity as a -- well
3 let me clarify it, because I know you've been working
4 for a long time.

5 But as an expert who is hired to review evidence
6 that the government has against a defendant and then
7 sometimes come into court and testify and sometimes not,
8 how many of those or what percentage of those cases have
9 been child pornography cases?

10 A. Over, um, my forensic career, probably 40 percent
11 have been child pornography.

12 Q. Okay, so about 40 percent. And, um, you've seen
13 that over your probably long career, so 40 percent of
14 that you've seen peer-to-peer technology being used by
15 people who are accused of -- well actually let me strike
16 that, who are convicted of child pornography offenses,
17 correct?

18 MR. CARNEY: I object to that, your Honor.

19 THE COURT: Yeah, sustained. I think that's
20 beyond the scope. But you may inquire. Or I'll ask
21 this question, which occurs to me.

22 In many of those types of cases, people were using
23 peer-to-peer file-sharing, were they not?

24 THE WITNESS: Yes, they were.

25 MS. PARUTI: Thank you, your Honor, that's

1 satisfactory.

2 THE COURT: Very well.

3 Nothing further for this witness, is there?

4 MR. CARNEY: No, your Honor, thank you.

5 THE COURT: You may step down. Thank you.

6 Call your next witness.

7 MR. CARNEY: I call Alex Levin.

8 THE COURT: He may be called.

9 (ALEX LEVIN, sworn.)

10

11 *****

12 ALEX LEVIN

13 *****

14

15 DIRECT EXAMINATION BY MR. CARNEY:

16 Q. Good morning.

17 A. Good morning.

18 Q. Could you please introduce yourself to the jurors?

19 A. Alex Levin. My last name is spelled L-E-V-I-N.

20 THE COURT: Mr. Levin, you be comfortable

21 there, but pull that microphone closer to you so it

22 picks up your voice better.

23 A. Alex Levin, my last name is spelled L-E-V-I-N.

24 Q. How old are you, sir?

25 A. I am 52.

1 Q. Where were you born?

2 A. I was born in Belarus.

3 Q. And what nation is that?

4 A. Well right now it's Belarus, but it was formerly
5 part of the USSR.

6 Q. When did you come to the United States?

7 A. In 1979.

8 Q. With whom did you come?

9 A. My parents and my brother.

10 Q. Was someone already living in the United States?

11 A. My oldest brother.

12 Q. Where did your family move to upon arrival in the
13 United States?

14 A. Worcester. Worcester, Massachusetts.

15 Q. Did you come to this country legally?

16 A. Yes.

17 Q. Did you become a United States citizen?

18 A. Yes, in 1985.

19 Q. And have you been a citizen of this country ever
20 since 1985?

21 A. Yes.

22 Q. Are your parents still living?

23 A. They are.

24 Q. Where do they live?

25 A. They live in Worcester in Assisted Care, they're

1 over 90 years old.

2 Q. Do you have any siblings?

3 A. I do, I have two brothers.

4 Q. And you'll have to keep your voice up, please. Why
5 don't you sit up near the microphone.

6 A. Yes. (Moves microphone.) I have two older
7 brothers.

8 Q. And what are their names?

9 A. Gregory and Edward.

10 Q. Is one of them present in this courtroom?

11 A. Yes.

12 Q. Have you ever been married?

13 A. I have.

14 Q. For how long?

15 A. 15 years. Almost 15 years.

16 Q. And what happened at that point?

17 A. In 19 -- I was married in 1996 and in 2011 we
18 divorced.

19 Q. Was it a contentious divorce or --

20 A. Not at all, we're still on very good terms.

21 Q. Did you have any children?

22 A. Yes.

23 Q. How many?

24 A. One. I have one daughter, she's 13 years old.

25 Q. Do you have any contact with this daughter?

1 A. I do, on a regular basis.

2 Q. Do you do anything on a daily basis with this
3 daughter?

4 A. We chat every single day.

5 Q. On the telephone?

6 A. On the telephone.

7 Q. Do you ever see her?

8 A. I see her at least once a week.

9 Q. After you arrived in high school, did you attend
10 schools there?

11 A. After I arrived in high school?

12 THE COURT: Yeah, I don't understand the
13 question.

14 MR. CARNEY: Yes. I'm sorry.

15 Q. After you arrived in Worcester, did you attend
16 schools there?

17 A. Yes, I attended Doherty Memorial High School.

18 Q. Did you graduate from high school?

19 A. I did, in 1984.

20 Q. The year before you became a United States citizen?

21 A. Correct.

22 Q. Did you attend college?

23 A. I did.

24 Q. Where did you go to school?

25 A. Central New England College of Technology in

1 Worcester.

2 MS. PARUTI: I'm sorry, I'm just having a
3 little difficulty hearing him.

4 THE COURT: Yes, if you'd repeat the answer.

5 A. Central New England College of Technology in
6 Worcester.

7 THE COURT: Central New England College of
8 Technology.

9 Now go ahead.

10 Q. And what was your degree in?

11 A. My major was in computer science. My minor was
12 comparative religions.

13 Q. Did you follow that with a master's degree?

14 A. I did.

15 Q. And what college or university did you attend?

16 A. Fitchburg State College, I believe it's now part of
17 UMass.

18 Q. And when did you receive that degree?

19 A. In 1992.

20 Q. And what was your degree in?

21 A. Computer Science.

22 Q. Could you give us a brief summary of your work
23 history after you graduated from Fitchburg State?

24 A. I started as an embedded systems developer, a
25 programmer, I grew into a programmer lead, and from

1 there I became an IT manager managing the full spectrum
2 of IT disciplines, software development, database
3 administration, security, and business analysis.

4 Q. And what do those topics involve?

5 A. Software development is, I think, self-explanatory.
6 Database Administration and Systems Administration, they
7 all involve, um, working with computer systems. For the
8 past 15, 20 years or so, I've been more on the business
9 side, technical project management, taking business
10 requirements and converting them into technical
11 specifications.

12 Q. I'd like to ask you if you have familiarity with the
13 Frostwire program?

14 A. I do.

15 Q. What is "Frostwire"?

16 A. It's --

17 MS. PARUTI: Objection.

18 THE COURT: No, overruled. He may tell us.

19 A. It's a peer-to-peer file-sharing software.

20 Q. What does that mean to you?

21 A. To me it means being able to download -- being able
22 to share files of any nature with other users on the
23 internet who also have the same software installed.

24 Q. What does it allow you to do with someone else who
25 is on this peer-to-peer network?

1 A. It allows you to download the files that they made
2 available on the program.

3 Q. Did you use that program?

4 A. I did.

5 Q. What does the "drive sweep" mean to you, that
6 phrase?

7 MS. PARUTI: Objection. May I be heard, your
8 Honor, actually?

9 THE COURT: You may be.

10 MS. PARUTI: Thank you.

11

12 THE SIDEBAR

13 THE COURT: Well I'm going to allow that
14 objection because it jumps too far, you're going to need
15 a time --

16 MR. CARNEY: I didn't hear.

17 THE COURT: It jumps too far, we're going to
18 need a time and a place and a person who had these
19 files, and then we'll get into what was done with these
20 files. But it seems to me he covers SAM, so I'm sort of
21 allowing it.

22 MS. PARUTI: I just want to front for you why
23 I'm concerned. I understand that he is conversant in a
24 lot of matters that are beyond the expertise of the
25 jury. I am concerned that there will be -- I anticipate

1 there will be questions asked that will infringe really
2 the number of areas of expert testimony, which is
3 absolutely inappropriate. If he -- given that he is a
4 percipient fact witness, obviously he can testify to
5 what he did on his computer, but he cannot strike
6 relevant expert testimony.

7 THE COURT: Nor do I give advisory opinions.
8 I'll have to go question by question.

9 MS. PARUTI: Thank you.

10

11 (In open court.)

12 Q. Mr. Levin, how long have you used a computer that
13 accesses the internet?

14 A. I think since the invention of the internet, the
15 early '90s.

16 Q. Um, did you learn about peer-to-peer file-sharing
17 once you began using the internet?

18 A. Yes.

19 Q. And what is "peer-to-peer file-sharing"?

20 MS. PARUTI: Objection.

21 THE COURT: Well again there's much to what
22 she said at the sidebar. He may tell us his experience.
23 What's your experience with peer-to-peer file-sharing?

24 THE WITNESS: Users of this software make
25 files available on their computers and you can download

1 those files.

2 THE COURT: Well -- and what's your experience
3 with doing it? When did you first do that?

4 THE WITNESS: Probably late 2000s to early
5 teens.

6 THE COURT: Yeah, for what purpose?

7 THE WITNESS: I downloaded mostly
8 high-definition concert videos, music videos, movies,
9 and after 2010, when it became available, cryptocurrency
10 mining software.

11 THE COURT: Go ahead, Mr. Carney.

12 Q. How would you determine if something you wished to
13 acquire was available from another person's hard drive?

14 THE COURT: Not how would he, how did you?

15 A. There are two ways. One, is you can search on the,
16 um, on Frostwire itself, on the program itself. Second,
17 is the users that I know that I have downloaded software
18 I needed, that I wanted from before, I would see those
19 users available and I would just drive sweep their, um,
20 their drives.

21 Q. Now, do you have to obtain a file from another user's
22 hard drive, one file at a time?

23 A. No, you can specify a wild card and you'll get all
24 the files that match those wild cards.

25 MS. PARUTI: Objection and move to strike on

1 the same basis.

2 THE COURT: Well you didn't -- no, that may
3 stand.

4 THE WITNESS: Sorry.

5 THE COURT: No, no, you just answer the
6 questions. That may stand.

7 Go ahead, Mr. Carney.

8 Q. In addition to acquiring a single folder, were there
9 ways to acquire more than one folder at a time?

10 MS. PARUTI: Objection.

11 THE COURT: Sustained.

12 Q. Did you acquire mother than one file at a time?

13 A. Yes.

14 Q. And how would you do that?

15 A. You would enter a search term with a wild card as a
16 filter, so basically any folder or any file that matches
17 that has those characters in it, or if a user has
18 enabled a drive sweep, I would just download the entire
19 drive.

20 THE COURT: And when first did you do that?

21 THE WITNESS: The drive sweep?

22 THE COURT: Well you described it. When first
23 did you download by putting in a term -- um, when first
24 did you use this "wild card" as you've referred to it?

25 THE WITNESS: File-sharing? I started using

1 file-sharing in the late 2000s.

2 THE COURT: And, um, precisely my question,
3 when did you first use this "wild card" feature?

4 THE WITNESS: From the very beginning.

5 THE COURT: All right.

6 To do what, to access what?

7 THE WITNESS: To access the files that I was
8 looking for.

9 THE COURT: All right.

10 And when first did you use drive sweep?

11 THE WITNESS: Pretty much from the start.

12 THE COURT: Okay.

13 And why did you do that?

14 THE WITNESS: Because the previous --

15 THE COURT: Always tell the jury.

16 THE WITNESS: The previous times that I'd seen
17 a specific user that had the files that I wanted and if
18 I saw the same user being enabled in a drive, I didn't
19 want to go and search through all their -- you know all
20 their stuff, so I just downloaded it to my drive and
21 then I'd look for the software that I needed on my
22 drive.

23 THE COURT: Doesn't that take up a lot of
24 memory on your computers?

25 THE WITNESS: Not memory, drive space.

1 THE COURT: "Drive space."

2 THE WITNESS: Storage space.

3 THE COURT: "Storage space." I'm using the
4 wrong term?

5 THE WITNESS: That's okay. Storage space is
6 cheap.

7 THE COURT: Tell the jury.

8 THE WITNESS: Storage space is abundant. It's
9 free. Um, it's nearly free. You can always get another
10 external drive and just plug it in. It's cheap.

11 THE COURT: And go from there, Mr. Carney.

12 Q. When you would employ a "drive sweep," how would you
13 actually do that?

14 A. If the user -- if you can see the user has been
15 enabled, just get the software, and if you just click on
16 it and save, you can create a folder on your drive and
17 save or put everything in the folder.

18 Q. Did you find people on the internet who would give
19 permission to a fellow person on a peer-to-peer program
20 to permit you to download their or switch over their
21 entire hard drive to your computer?

22 A. Yes.

23 MS. PARUTI: Objection.

24 THE COURT: Well that's leading, but I'll let
25 that stand.

1 So you've found occasions that people would allow
2 this. Go from there.

3 THE WITNESS: Yes.

4 Q. What would you do once that person's entire hard
5 drive was now located on your computer hard drive?

6 A. I would go into the folder and either look for the
7 files specifically or I would do -- I would research on
8 the computer for the, um, for the -- usually it's
9 concert videos that I was looking for.

10 Q. Was there a particular band that you were looking
11 for concert videos of?

12 A. 95 percent of the time it was "The Grateful Dead."

13 Q. Let's say that you had the other person's hard drive
14 now on your hard drive --

15 A. Yes.

16 Q. -- what type of searches would you perform on your
17 computer accessing this other hard drive?

18 A. "San Francisco, April 7th, 1969."

19 Q. Okay. You indicated you also used it to find other
20 things?

21 A. I have.

22 Q. Could you give us examples?

23 A. Um, movies. I think the last thing that I
24 downloaded through Frostwire was the whole "Godfather"
25 trilogy. I also downloaded crypto-mining, crypto-

1 currency software.

2 Q. What is "crypto-currency"?

3 A. Bitcoin is a crypto-currency, and there are other
4 coins as well.

5 Q. What is "Bitcoin"?

6 A. "Bitcoin" is a digital asset or digital currency
7 that's decentralized that allows peer-to-peer payment.

8 Q. How does one acquire Bitcoin?

9 A. These days you can buy it on --

10 MS. PARUTI: Objection. I'm sorry to again --

11 THE COURT: How does one -- in the subjunctive
12 we'll sustain it.

13 Did you acquire any Bitcoin?

14 THE WITNESS: I did.

15 THE COURT: How did you do it?

16 THE WITNESS: I used the mining TOR software
17 that I would download from Frostwire.

18 Q. When you would download to your computer an entire
19 hard drive and you looked for specific items such as
20 Grateful Dead videos or Bitcoin information, what did
21 you do after you completed those searches?

22 A. I would just nuke the rest. I would delete the
23 rest.

24 Q. You would what?

25 A. You're saying what would I do with the rest of the

1 files that I --

2 A. Yes, would you -- did you ever look at those other
3 files?

4 THE COURT: "I would delete the rest," he
5 said.

6 A. Yes, I would delete the rest.

7 Q. All right. Did you do that in every instance?

8 A. Um, probably not. I wasn't terribly, um, you know,
9 terribly accurate. I would just see what -- I would
10 take what I need and I would delete the rest. But did I
11 go through every tree structure? Probably not.

12 Q. All right. Were there times when you brought over,
13 from peer-to-peer, the entire hard drive of someone else
14 and you wouldn't delete the stuff that you were not
15 interested in?

16 MS. PARUTI: Objection. I just don't
17 understand the question?

18 THE COURT: No, no, it's just a little
19 different.

20 Do you recall times when you didn't delete the
21 rest?

22 THE WITNESS: Yes, I am certain, I'm positive
23 there were times that I just didn't -- didn't bother.

24 Q. Would you have any way to know what was on those
25 files that you did not download?

1 MS. PARUTI: Objection.

2 THE COURT: Well you keep asking "Would he."

3 Can you give us an instance, do you recall any
4 instance where you didn't?

5 THE WITNESS: Well like I said, I wasn't very
6 methodical. I probably, you know, in hindsight should
7 know what it is, but I can tell you that I saw
8 something -- if I saw something that I wasn't sure what
9 it was, I would just say "To hell with it."

10 THE COURT: "I would just say 'To hell with
11 it'?"

12 THE WITNESS: "To heck with it." I would just
13 say "I'll deal with it later," and never get to it.

14 THE COURT: So you've testified, um, you
15 weren't very methodical on this, but once you had a
16 whole bunch of files, you'd search for what you wanted,
17 and sometimes you'd delete the rest --

18 THE WITNESS: Most of the time.

19 THE COURT: Your testimony is "most of the
20 time"?

21 THE WITNESS: Yeah, most of the time. But not
22 every time.

23 THE COURT: All right.

24 Go ahead. Well actually I think it's time now. I
25 need to see you at the sidebar.

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AT THE SIDEBAR

THE COURT: Okay, now having in mind I said you could recall Nicholls, you understand I'm going to take Nicholls -- in effect it's the same rules, that is he can get on now and say that you can do this drive sweep with file-sharing, if that's his expert opinion. But that's it.

Now recognizing that, we're going to give this to the jury on Wednesday or Thursday?

MS. PARUTI: I don't know how long Mr. Carney expects to have the defendant on the stand.

THE COURT: I can't believe he's going to have him on much longer, do you?

MR. CARNEY: I agree, your Honor, maybe 15 or 20 minutes.

MS. PARUTI: I can't see the cross being much longer than 30 minutes or so.

THE COURT: And then -- so we're going to give it to them on Wednesday. I mean we're not going to hold you to it, it's a criminal case, but I want them to be prepared. All right? And so I will tell them that.

(In open court.)

THE COURT: Mr. Levin, we're going to have to

1 stop because of my obligation, so you may step down.

2 So you know what I'm asking them over there,
3 "Where are we here?" And again I'm not holding people
4 to this, but everyone is cooperating in terms of the
5 schedule, and here's what they tell me and what I tell
6 you.

7 It very much looks like we will be able to give
8 you this case next Wednesday, the 29th, that is to say
9 that while there is more evidence to come, so you must
10 keep your minds suspended, there isn't that much more in
11 terms of the time.

12 There are important parts of the case that come
13 after the testimony. The lawyers get a chance to sum
14 up, to argue to you the conclusions that they would urge
15 you to draw from the evidence and I must in detail --
16 and now we know what is specifically disputed here, so I
17 must be very careful in instructing you as to the law.
18 But when that's done, the case is yours.

19 We expect that it will be in your hands by 1:00,
20 our usual lunch time next Wednesday the 29th.
21 Thereafter you're in charge, that is to say -- I've told
22 you we're not staying into the evening, so we're not
23 going to stay after 5:00. If you get to a point and
24 you'd like to go home, collectively we can stop the
25 deliberations, you can come back on Thursday. But so

1 you know the schedule, we expect to need you all day on
2 Wednesday the 29th.

3 Now we knew what the schedule would be -- I'm
4 sorry I have to cut it short now, but that's my
5 responsibility. But we knew we were going to give you
6 the Memorial Day holiday and I wish you the most
7 meaningful Memorial Day holiday.

8 But I have this caution for you. I hope you have
9 a wonderful holiday, which probably will mean seeing
10 people you don't normally see. It would be best if you
11 not bring up this subject, but again the schedule is
12 fine and you have every right to bring up the fact that
13 you're serving on a jury, so long as you immediately
14 say, "And the judge has told us we can't say anything
15 about it." Nothing about it, not whether it's on a
16 so-called criminal or a civil case. You just can't talk
17 about it.

18 So have a wonderful holiday. We resume on
19 Wednesday. So if you're going anywhere, you'll have
20 time to get back. At 9:00, and I know I can count on
21 you, but expect to be with us all day on Wednesday.
22 Keep your minds suspended, because you've not heard all
23 the evidence, nor have you heard the arguments or my
24 instructions. Do not discuss the case either among
25 yourselves or with anyone else. Have a very good

1 weekend.

2 THE CLERK: All rise for the jury.

3 THE COURT: We'll be in recess until Wednesday
4 the 29th of May at 9:00 a.m. We'll recess.

5 (Jury leaves, 12:20 p.m.)

6 (Adjourned, 12:20 p.m.)

7

8 C E R T I F I C A T E

9

10 I, RICHARD H. ROMANOW, OFFICIAL COURT REPORTER, do
11 hereby certify that the forgoing transcript of the
12 record is a true and accurate transcription of my
13 stenographic notes, before Judge William G. Young, on
14 Wednesday, May 22, 2019, to the best of my skill and
15 ability.

16

17

18 /s/ Richard H. Romanow 06-25-20

19 _____
20 RICHARD H. ROMANOW Date

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